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| --- | --- |
| primary logo |  State of Minnesota Contract |
| [remove consecutive zeroes in front of numbers] SWIFT Contract No.: |  |

 **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 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, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

**Contract**

# Term of Contract

## Effective date. [Spell out full date (e.g., April 1, 2019)], or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State’s Authorized Representative to begin the work.

## 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.

## [Delete for one time buy] Contract Use. This Contract is not exclusive and shall not be construed as guarantying a minimum or maximum amount of usage.

# Contractor’s Duties

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

# Representations and Warranties

## 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.

## 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.

## 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.

# Time

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

# Compensation and Conditions of Payment

## Compensation. The State will pay for performance by the Contractor under this Contract in accordance with the breakdown of costs as set forth in Exhibit D which is attached and incorporated into this Contract.

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

# Authorized Representative

## State’s 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 and the authority to accept the services delivered or goods received under this Contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

## 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.

# 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 Requirements

Exhibit C: Specifications, Duties, and Scope of Work

Exhibit D: Price and Payment Schedule

Exhibit E: [optional, if needed]

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| --- | --- | --- |
| **1. State Encumbrance Verification*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05*** |  | **3. State Agency*With delegated authority*** |
| Print name: |  |  | Print name: |  |
| Signature: |  |  | Signature: |  |
| Title: |  | Date: |  |  | Title: |  | Date: |  |
| SWIFT Contract No.: |  |  |  |

|  |  |  |
| --- | --- | --- |
| **2. Contractor*The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.*** |  | **4. Commissioner of Administration*As delegated by The Office of State Procurement*** |
| Print name: |  |  | Print name: |  |
| Signature: |  |  | Signature: |  |
| Title: |  | Date: |  |  | Title: |  | Date: |  |

Exhibit A: Contract Terms

# Prompt Payment and Invoicing.

## 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.

## Invoicing. At a minimum the invoice must meet the requirements found on Exhibit D which provides a list of minimum invoice requirements.

# Assignment, Amendments, Waiver, and Contract Complete.

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

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

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

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

# Termination.

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

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

## Termination for Insufficient Funding. The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services 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.

# Force Majeure.

Neither party shall be responsible to the other or considered in default of its obligations within this 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.

# Indemnification.

## In the performance of this 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.

## Nothing within this 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.

# Governing Law, Jurisdiction, and Venue.

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

# Contract Use by State Agencies.

To the extent applicable, the Contract does not prohibit state agencies from using their delegated purchasing authority to procure similar goods and services from other sources.

# Warranty.

The Contractor warrants to the ordering entity that materials and equipment furnished under the Contract will be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the contract. Work not conforming to these requirements, including substitutions not properly approved and authorized in writing may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If requested, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used.

All installation materials and labor shall be guaranteed for a period of one (1) year following the date of final acceptance. During the first year following acceptance, the Contractor shall, upon notification by the ordering entity of any malfunctions, make necessary repairs, including labor, travel, and materials, at the Contractor’s expense.

# [optional] Original Equipment Manufacturer (OEM Warranty).

The equipment offered must include the OEM standard warranty. The Contractor is responsible for the cost of any inspections, adjustments, warranted parts, and labor charges to repair or replace warranted parts that are a result of equipment failure(s) during the warranty period. This shall be performed promptly unless otherwise mutually agreed in writing by the Customer and the Contractor. This warranty shall commence when the unit is put into service.

## OEM Extended Warranty Options. If the Contractor provides an OEM Extended Warranty Option, the Contractor must provide a copy of the applicable terms and conditions, including a detail of coverage, to the State upon request. The cost of an OEM Extended Warranty must include all associated costs.

## Contractor (Add-On) Warranty Options. The Contractor may provide additional warranty options, which include, but are not limited to travel pickup, or delivery charges that are a result of equipment failure(s) prior to or during the warranty period or extended warranty period. This warranty option shall commence when the unit is put into service and is in addition to OEM warranty options stated above.

# [optional – only if included in RFB – and requires OSP approval] Foreign Outsourcing of Work Prohibited.

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

# Delivery.

Contractor is obligated to deliver within the quoted lead times. If delivery is not made within that time frame, the State reserves the right to deem the Contractor in default.

[optional] Contractor must confirm delivery locations and requirements with the ordering entity. Prior to delivery, the Contractor is responsible for confirming in writing with the ordering entity that the delivery location will accommodate unloading the equipment. Contractor must notify the receiving entity at least 72 hours before delivery to allow for inspection and compliance. No delivery can be made on a State Holiday (as defined in Minn. Stat. § 645.44, subd. 5), on Saturday or Sunday, or after 4:00 p.m. Central Time on weekdays, without prior written approval by the receiving entity.

# Risk of Loss.

The State is relieved of all risks of loss or damage to the goods and equipment during periods of transportation, installation by the Contractor, or while in the possession of the Contractor or its agent.

# [Option 1 – if services] Purchase Orders.

The parties agree that there is no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the Contract. The Purchase Order number must appear on all documents (e.g., invoices, packing slips, etc.).

[Option 2 – if no services] **Purchase Orders and Purchasing Cards.**

The parties agree that there is no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the Contract. The Purchase Order number must appear on all documents (e.g., invoices, packing slips, etc.).

The Contractor must accept a purchasing card for order placement in addition to accepting a purchase order, without passing the processing fees for the purchasing card back to the State. The State’s single purchase maximum on the Contract is $5,000 on the purchasing card, but it may be increased with the State’s and the Contractor’s approval.

# [optional] Equipment Specifications.

All equipment must meet the contract specifications and all federal and State safety codes and regulations in effect at the date of manufacture. All equipment must be Original Equipment Manufacturer (OEM) equipment unless otherwise stated in the contract.

# Items Offered as New.

All products, materials, supplies, replacement parts, and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available, unless otherwise stated in this Contract.

# [optional] Equipment Trade-In.

If requested in writing by the ordering entity, the Contractor may allow equipment to be used as trade-in against new contract equipment purchases. Trade-ins will be allowed on a case-by-case basis, and the ordering entity has the right to refuse any offer made by the Contractor. All equipment will be traded “as is, where is,” with no guarantee express or implied.

Title to the trade-in equipment will transfer to the Contractor when the new equipment is delivered and accepted by the ordering entity, unless otherwise agreed to in writing by the Contractor and the ordering entity. The ordering entity assumes all costs associated with the title transfer of the trade-in equipment unless otherwise agreed to in writing by the Contractor and the ordering entity. The title of State equipment trade-ins shall be provided to the Contractor in accordance with Minn. Stat. § 168A.11.

**Note:** If you include the ‘EQUIPMENT TRADE IN’ in your Contract Terms, then you MUST advise and obtain approval from Surplus Services prior to Event posting. Surplus Services must approve any Trade-In option.

# [optional] Product Changes During the Contract.

All product offered should be available during the initial term of the contract. The Contractor must notify the State’s Authorized Representative immediately if the manufacturer discontinues or replaces a contracted model number. A replacement model number must meet the contract specifications. The State is under no obligation to accept a replacement model. Any change to a contracted model number must be confirmed in writing by the State through a written amendment. The State reserves the right to request documentation for any requested change under this section to evaluate how the specifications of the replacement product deviates from the specifications of the replaced product.

# [optional] Product Returns.

## Non-Defective Conforming Product. The Customer may return an unopened, non-defective product conforming to the specifications of an order within 60 calendar days of the invoice date with no additional fees. If the non-defective conforming product is returned within 60 calendar days of the invoice date after it has been opened, the Contractor may charge the Customer a restocking fee of up to 10% of the cost of the product. Return shipping costs to return a non-defective conforming product to the Contractor is the responsibility of the Customer.

## Defective or Non-conforming Product. The Customer may return any product determined by the Customer as defective or not conforming to the specifications, order, or contract, within 60 calendar days of receipt with no restocking or return shipping fee.

The Contractor should provide the Customer with a Return Merchandise Authorization number (RMA) and must arrange for a “call tag” to be issued via a “carrier” to order pick up of the defective or non-conforming product from the Customer. The “carrier” must pick up the defective or non-conforming product at the address to which the product was shipped.

### Replacement of Defective or Non-conforming Product. The Customer may request the Contractor provide a replacement product or cancel the order. If the Customer choses to have the defective or non-conforming product replaced, the Contractor must replace a defective or non-conforming product at no cost to the Customer.

### Return of Defective or Non-conforming Product (without replacement). The Customer’s account must be credited within fourteen (14) calendar days of arrival of the returned product at the Contractor’s location. The amount to be credited must be the equal of the price of the product plus all freight, shipping, handling, or ancillary charges associated with shipment of the product from and return to the shipping location. If, after inspection, the Contractor determines that the product is not defective or non-conforming, the Contractor may bill the Customer for the return shipping charges.

# [Subcontracting Option 1] Subcontracting and Subcontractor Payment.

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

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

The provisions of the 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 Contract.

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

# [Subcontracting Option 2] Subcontracting.

This Contract may not be subcontracted in whole or in part.

# 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.

# Government Data Practices.

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

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

# Intellectual Property Rights.

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

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

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

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

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

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

## Obligations.

### Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the State’s Authorized Representative with complete information and/or disclosure thereon.

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

### Indemnification. Notwithstanding any other indemnification obligations addressed within this 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.

# Copyright.

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

# Assignment of Antitrust Rights.

Upon the request of the State of Minnesota, Contractor will irrevocably assign to State any state or federal antitrust claim or cause of action that the Contractor now has or which may accrue to the Contractor in the future, in connection with any goods, services, or combination provided by Contractor under the terms of this Contract.

# 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 Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor’s agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. 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 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.

# State Audits.

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

#  Publicity and Endorsement.

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

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

# 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.

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

## 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 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.

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

# 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.

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

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

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

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

# [Remove if Contract is for Goods only] 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/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

# [optional] Professional/Technical (P/T) Services Ancillary to Goods or General Services.

For state agencies, Professional/Technical (P/T) Services must be related to the goods or services purchased from this Contract and is limited to $50,000 per project. Based on the size, scope and complexity of a project, the State’s Authorized Representative may approve dollar limits exceeding $50,000 per project. This may require a separate work order contract defining the PT scope of work.

Ten percent (10%) of the cost of each P/T deliverable will be withheld by the State. The retainage will be held by the State until the P/T deliverable has been reviewed by the head of the agency entering into the Contract and the head of the agency has certified that the Contractor has satisfactorily fulfilled the terms of the Contract.

# Hazardous Substances.

To the extent that the goods to be supplied to the State by the Contractor contain or may create hazardous substances, harmful physical agents, or infectious agents, as set forth in applicable State and federal laws and regulations, the Contractor must provide the State with Material Safety Data Sheets regarding those substances. A copy must be provided upon request. Goods and containers supplied to the State must be labeled in compliance with state and federal laws, rules, and regulations.

These terms apply to goods supplied under this contract:

## Products Containing Triclosan Banned. The Contractor must comply with Minn. Stat. § 145.945.

## Products Containing Certain Types of Polybrominated Diphenyl Ether Banned. The Contractor must comply with Minn. Stat. § 325E.385-325E.388).

## Coal Tar Sealant Use and Sale Prohibited. The Contractor must comply with Minn. Stat. § 116.202.

## Products Containing Mercury. The Contractor must comply with Minn. Stat. 116.92.

# [optional] Printers and Multi-Functional Devices.

The Contractor must indicate in the catalog or other marketing materials if the product will not operate, is not intended to operate, or will not operate under full manufacturer’s warranty, using paper with a post-consumer recycled content. If marketing material is silent about using recycled content paper, the Contractor agrees that the product meets or exceeds the State’s requirements.

# [optional] Paper and Printing Requirements.

In accordance with Minn. Stat. § 16C.073, when practicable under the scope of the Contract, the Contractor shall:

* use uncoated office paper and printing paper;
* use recycled content paper with at least 30 percent post-consumer material by weight;
* use paper which has not been dyed with colors, excluding pastel colors;
* use recycled content paper that is manufactured using little or no chlorine bleach or chlorine derivatives;
* use reusable binding materials or staples and bind documents by methods that do not use glue;
* use soy-based inks; and
* produce reports, publications, and periodicals that are readily recyclable.

This requirement does not apply to coated paper that is made with at least 50 percent post-consumer materials.

The Contractor must print documents on both sides of paper where commonly accepted publishing practices allow.

# [optional] Background Security Compliance.

[Discuss whether inclusion of this clause is necessary with a supervisor, the AGO, or internal legal counsel. Each agency may have its own legal considerations.] Contractor is required to conduct background checks required by State and Federal law. In addition, Customers may require a Background Check on individual(s) selected for work under this contract. When required, the selected individual(s) must complete and submit any required consent forms, including but not limited to investigation forms, photo identification, and fingerprinting. Unless otherwise notified in writing by ordering entity, Contractor shall be responsible for the review and evaluation of Background Check results, in compliance with all State and Federal laws. Costs related to Background Checks shall be the sole responsibility of the Contractor. Contractor certifies compliance with this provision throughout the Contract term.

# [optional] Drug Testing.

# [Discuss whether inclusion of this clause is necessary with a supervisor, the AGO, or internal legal counsel. Each agency may have its own legal considerations.]

Within two weeks prior to the earliest date of performance specified in this Contract, the Contractor must provide to the State drug test results on all employees proposed to perform the services required in the Contract. Drug tests shall be conducted according to the provisions of Minn. Stat. §§ 181.951 – 181.954 and any union or other contract terms that apply to the Contractor’s employees. All costs associated with this testing shall be the responsibility of Contractor. The Contractor must review the results of the tests, and the results must show that no drugs were detected. Before a Contractor employee is allowed onsite to work, the Contractor must certify to the State that it has a printed copy of the results on file and will keep it and other information as required in the Contract.

# [optional] Uniforms.

Contractors and their subcontractors shall be properly uniformed prior to entering any facility. The Contractor’s or their subcontractor’s company name must be identifiable on the uniform.

# [optional] 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 Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact 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.

# [optional] Nonvisual Access Standards.

[Delete if your agency is an Executive Branch agency consolidated under MNIT] 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.

# [optional] Supply Chain Security.

[If you are a MNIT consolidated agency, please include this Section in IT-related hardware contracts. If you have questions, please contact MNIT at oet.isrm@state.mn.us. If you are not a MNIT consolidated agency contact your agency legal staff to determine if this section if necessary.]

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

## 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 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.

## 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.

## 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.

# [optional] Security and Data Protection.

[If you are a MNIT consolidated agency, please include this Section in IT cloud contracts. If you have questions, please contact MNIT at oet.isrm@state.mn.us. If you are not a MNIT consolidated agency contact your agency legal staff to determine if this section if necessary. **Instructions:** Remove paragraph x.10 if the RFP otherwise includes insurance requirements for Network Security and Privacy Liability. The paragraph x.17 (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 Contract. The terms, conditions, and provisions of this Security and Data Protection section take precedence and will prevail over any other terms, conditions, and provisions of the Contract, if in conflict. This Security and Data Protection section, including its sub-sections, survives the completion, termination, expiration, or cancellation of the Contract.

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

### “Cloud Services” includes “cloud computing” as defined by the U.S. Department of Commerce, NIST Special Publication 800-145 (currently available online at: <http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf>) and any other software, hardware, hosting service, subscription, or other service or product by which Contractor stores, transmits, processes or otherwise has access to State data.

### “State” means the State, or a cooperative purchasing venture (“CPV”) member when the CPV member is the ordering entity (if CPV purchases are permitted under this 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.

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

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

All State data, including copies, summaries and derivative works thereof, must be remitted, in a mutually agreeable format and media, to the State by the Contractor upon request or upon completion, termination or cancellation of the Contract. The foregoing sentence does not apply if the State Chief Information Security Officer or delegate authorizes in writing the Contractor to sanitize 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.

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

## Security Program. Contractor will make best efforts to protect and secure the State data related to this 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 5, 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.

## 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.

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

## 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.

## Data Center and Monitoring/Support Locations. During the term of the Contract, Contractor will: (1) locate all production and disaster recovery data centers that store, process or transmit State data only in the continental United States, (2) store, process and transmit State data only in the continental United States, and (3) locate all monitoring and support of all 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.

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

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

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

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

## Insurance and Liability. Contractor warrants that it has and will maintain the insurance described below in force and effect throughout the term of the 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 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 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 Contract. Contractor shall maintain such insurance for a period of at least three (3) years following expiration or termination of the 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 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 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 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 Contract, the Contractor shall be liable for all damages to the extent such damages are within the insurance limit.

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

## 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.

## 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.

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

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

## 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.

## 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.]

## Compliance with Data Privacy and Security Laws and Standards. Contractor shall comply with the applicable State of Minnesota Information Security Policy & Standards incorporated herein by reference and available at <https://mn.gov/mnit/government/policies/security/>. 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-MNsure-data-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 Contract when storing, processing, transmitting or otherwise accessing State date 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 Contract and it will not monitor or share such data with or disclose it to any third party except as provided for in this 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 Contract, or as specifically and expressly provided for in this 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 Contract, Contractor will maintain a provisional Authority to Operate (ATO) at the Moderate Level from the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB) or Federal Agency for any and all Cloud Services provided under this Contract.

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

# [optional] PCI Language.

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

All of Contractor’s systems and components that process, store, or transmit Cardholder Data shall comply with the most recent version of the Payment Card Industry Data Security Standard (“**PCI DSS**”) promulgated by the PCI Security Standards Council, available online at: [https://www.pcisecuritystandards.org/document\_library](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.pcisecuritystandards.org%2Fdocument_library&data=02%7C01%7Cdoug.heeschen%40state.mn.us%7Cc476189fb2644e84b8ce08d76887d19c%7Ceb14b04624c445198f26b89c2159828c%7C0%7C0%7C637092804856982613&sdata=6od2LA2VFxiAoiC%2FO8bjEbTPIgMDm9ZaeCA9vOeI%2FyY%3D&reserved=0). The Contractor shall, upon request, provide the State with Contractor’s current Attestation of Compliance signed by a PCI QSA (“Qualified Security Assessor”). For purposes of this sub-section, “Cardholder Data” has the meaning defined by the PCI Security Standards Council, Payment Card Industry (PCI) Data Security Standard (DSS) and Payment Application Data Security Standard (PA-DSS), **Glossary of Terms, Abbreviations, and Acronyms**, available online at: [https://www.pcisecuritystandards.org/document\_library](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.pcisecuritystandards.org%2Fdocument_library&data=02%7C01%7Cdoug.heeschen%40state.mn.us%7Cc476189fb2644e84b8ce08d76887d19c%7Ceb14b04624c445198f26b89c2159828c%7C0%7C0%7C637092804856992605&sdata=Lal7ku8sSvSPh%2FSP37kJxSWW7LCcK593hMIu3Gj5KEs%3D&reserved=0).

# 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.

**[CONSTRUCTION TERMS –Delete all yellow highlighted text if not a construction solicitation.]**

# Subcontracting. [Delete the text in red unless the estimated value of the solicitation is close to $50,000. If it is close to $50,000 change the red text color to black.]

Only subcontractors that have been approved by the State’s Authorized Representative can be used for this Contract. See attachments to Exhibit A, Supplements 2, and 3, Responsible Contractor forms.

After the effective date of the Contract, the Contractor shall not, without submitting Supplement 3 to Exhibit A and receiving prior written approval of the State’s Authorized Representative, subcontract for the performance of any of the Contractor’s obligations that were not already approved for subcontracting when the Contract was awarded. During this Contract, if an approved subcontractor is determined to be performing unsatisfactorily by the State’s Authorized Representative, the Contractor will receive written notification that the subcontractor can no longer be used for this Contract.

The provisions of the 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 Contract.

# Subcontractor Payment.

In accordance with Minn. Stat. § 16A.1245, the Contractor shall, within ten (10) days of receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of $100 or more will be $10. For an unpaid balance of less than $100, the amount will be the actual penalty due. A subcontractor that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney’s fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under the Contract. In the event the Contractor fails to make timely payments to a subcontractor or supplier, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are no remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

# Responsible Contractor Requirement (Minn. Stat. § 16C.285, subd. 3). [Delete unless the estimated value of the solicitation is close to $50,000.]

List and submit all first-tier Subcontractors on Supplement 2, titled “Supplement 2 – First-Tier Subcontractors List.” This may be submitted with the response, but it must be submitted prior to contract execution. If additional Subcontractors are added to a project after execution of a contract, complete and submit the attachment tilted “Supplement 3 Additional Subcontractors List” within 14 days of retaining the additional Subcontractors. Supplement 3 verifies the additional Subcontractors have been certified as in compliance with the requirements of Minn. Stat. § 16C.285. Upon request from the ordering entity, the Contractor shall submit copies of the signed certifications of compliance from all Subcontractors of any tier.

# Prevailing Wage.

All State funded or partially State funded work against this contract is subject to the prevailing wage requirements pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120 as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and all tiers of subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

Work under this contract includes, but is not limited to, [Enter examples of trades that may be used under the scope of this contract].See <https://www.revisor.mn.gov/rules/?id=5200.1102> and <https://www.revisor.mn.gov/rules/?id=5200.1100>.

The Contractor and Subcontractor shall furnish to the ordering entity all payrolls, of all workers on the project, via email as attachments, to the email address provided on the purchase order. If an email address is not included on the purchase order, contact the ordering entity to obtain the appropriate email address.

The Contractor and Subcontractor must submit the State of Minnesota Prevailing Wage Payroll Report and Statement of Compliance Form within fourteen (14) days after the end of each pay period. The forms are available on the Office of State Procurement (OSP) website at <http://www.mmd.admin.state.mn.us/mn02000.htm>. No other payroll forms will be accepted to meet this requirement.

The Contractor and Subcontractor must compete the Prevailing Wage Payroll Report in Microsoft Excel, and the Statement of Compliance in an Adobe PDF format. The subject line of the email must provide the company name, contract/purchase order number, and pay period ending dates.

The Department of Labor and Industry has a web page with Frequently Asked Questions about prevailing wages at <http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>

For questions regarding the Prevailing Wage Laws, contact the Department of Labor and Industry at 651.284.5091.

# Federal Davis-Bacon Prevailing Wage.

[Option 1]Federally funded or partial federally funded projects are subject to the Davis-Bacon Act which requires that all contractors and all tier of subcontractors performing on federally funded projects (and contractors or subcontractors performing on federally assisted contracts under the related Acts) in excess of $2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract’s Davis-Bacon wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area.

If a project is federally funded and Davis-Bacon prevailing wages are required, the ordering entity shall notify the contractor of this requirement upon a request for quotation. The ordering entity must download the Davis-Bacon wage determination for the county in which the project will take place. See Federal Wage Determinations Onlin.gov at <http://www.wdol.gov/dba.aspx>. If State and federal funds are being used to fund a project both State and federal prevailing wage requirements and wage rates must be included on the order. If the Davis-Bacon hourly rate classification is higher than the State’s prevailing wage classification contractors may adjust their labor rate per classification.

[Option 2] Federally funded or partial federally funded projects are subject to the Davis-Bacon Act which requires that all contractors and all tier of subcontractors performing on federally funded projects (and contractors or subcontractors performing on federally assisted contracts under the related Acts) in excess of $2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract’s Davis-Bacon wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area.

Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls <https://www.dol.gov/agencies/whd/forms/wh347>. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

The Contractor and Subcontractor shall furnish to the ordering entity all payrolls, of all workers on the project, via email as attachments, to the email address provided on the purchase order. If an email address is not included on the purchase order, contact the ordering entity to obtain the appropriate email address.

# CPV Requirements.

CPV members are responsible to confirm if they are subject to rules, regulations, or ordinances which establish the prevailing wage rate as defined in Minn. Stat. § 177.42.

[Delete these pw instructions below if your contract will not be open to MnDOT)

# How to Provide Information for the Minnesota Department of Transportation (MnDOT).

After receiving orders from MnDOT, Contractors are required to provide payroll information in the time frame specified by Statute and in the method specified by MnDOT below.

To meet Minn. Stat. § 177.43 requirements, the Contractor and Subcontractor(s) shall submit payroll forms according to MnDOT (Office of Construction, Transportation Building, Mail Stop 650, 395 John Ireland Blvd., St. Paul, MN 55155-1899) requirements.

## All Contractors shall submit a payroll statement to the Department of Transportation, Minn. Stat. § 177.44, Subd. 7. The statement shall be submitted based on the Contractor’s payment schedule. If a Contractor pays its employees biweekly, a payroll statement shall be submitted biweekly (MnDOT Contract Administration Manual, Section .320). All Contractors shall pay its employees at least once every 15 days on a date designated in advance by the employer (Minn. Stat. § 181.10).

## Each Statement submitted shall include all employees that performed work under the contract and provide at a minimum the following information (Minn. Rules 5200.1106, Subpart 10 and Minn. Stat. § 177.30):

### Contractor’s name, address, and telephone number.

### State project number.

### Payroll report number.

### Project location.

### Workweek ending date.

### Name, social security number, and home address for each employee.

### Labor classification(s) and/or three-digit code for each employee.

### Hourly straight time and overtime wage rates paid to each employee.

### Daily and weekly hours worked in each labor classification, including overtime hours for each employee.

### Authorized legal deductions for each employee.

### Project gross amount, weekly gross amount and net wages.

## Payroll records may be submitted in any form provided it includes all the information contained in Subpart A (1-11) of this section. However, Contractors needing a payroll form may utilize the “front side” of the U.S. Department of Labor’s, WH-347 Payroll Form. This form is available by visiting the Labor Compliance website ([www.dot.state.mn.us/const/labor](http://www.dot.state.mn.us/const/labor)).

## All payroll records must be accompanied with a completed and signed MnDOT 21658 – Statement of Compliance Form (Minn. Rules 5200.1106, Subpart 10).

## The prime contractor is responsible for assuring that its payroll records and those of all subcontractors include all employees that performed work under this contract and accurately reflect the hours worked, regular and overtime rates of pay and classification of work performed (Minn. Stat. § 177.30(1)(2)(3)(4)).

## The prime contractor is responsible to maintain all certified payroll records, including those of all subcontractors, throughout the course of a construction project and retain all records for a period of three years after the final contract voucher has been issued (Minn. Stat. § 177.30(4)).

## At the end of each pay period, each contractor shall provide every employee, in writing an accurate, detailed earnings statement (Minn. Stat. § 181.032).

## Upon request from the Minnesota Department of Labor and Industry (MN/DLI) or the Department of Transportation, the prime contractor shall promptly furnish copies of payroll records for its workers and those of all subcontractors, along with records, deemed appropriate by the requesting agency to determine compliance with these contract provisions (Minn. Stat. § 177.44, subd. 7 and Minn. Rules 5200.1106, Subpart 10).

## At the Department of Transportation’s discretion, the project engineer may administer the submission of payroll records according to MnDOT’s Payroll Maintenance Program. The guidelines for the implementation and administration of this program are outlined in the MnDOT Contract Administration Manual, Section A(4)(d).

## If, after written notice, the prime contractor fails to submit its payroll reports and certification forms and those of any subcontractor, the Department of Transportation may implement the actions prescribed in State Funded Construction Contracts Special Provisions Division A – Labor, Section XVI. NON-COMPLIANCE AND ENFORCEMENT available on-line at: <http://www.dot.state.mn.us/const/labor/documents/contractdocs/specprovdivastate.pdf>.

# Non-Minnesota Contractors. [Delete unless the estimated value of the solicitation is close to $50,000.]

Unless an exemption was received from the Department of Revenue, Minn. Stat. § 290.9705 requires public entities to deduct and withhold eight (8) percent of cumulative calendar year payments to Non-Minnesota Contractors which exceed $50,000.

#  Compliance with Tax Law Requirements.

## The State cannot make final payment to the Contractor until the Contractor demonstrates that it and all its subcontractors have complied with the Income Tax withholding requirements of Minnesota Statutes, section 290.92 for wages paid for work performed under the contract. To establish compliance, the Contractor must submit a “Contractor Affidavit” either online or in paper form (IC134) to the Minnesota Department of Revenue. The Contractor will receive written certification of compliance when the Department of Revenue determines that all withholding tax returns have been filed and all withholding taxes attributable to the work performed on the contract have been paid. The Contractor must then provide this written certification to the Architect/Engineer to receive final payment.

## Every subcontractor working on the Project must submit an approved “Contractor Affidavit” from the Minnesota Department of Revenue to the Contractor before the Contractor can file its own Contractor Affidavit. The Contractor is strongly encouraged to obtain the certification from each Contractor immediately following the Subcontractor’s completion of work on the project. Delays in completing the forms until after the project is complete may result in significant additional work for the Contractor in collecting the required forms.

## The Department of Revenue, in association with the Department of Employment and Economic Development, offers a free seminar to help contractors understand tax law requirements. The Department strongly urges the Contractor and all subcontractors to attend the “Employment Taxes & Employer Responsibilities Seminar” or similarly offered classes. You can find a schedule and more information on the Department’s website at: <http://www.revenue.state.mn.us/businesses/withholding/Pages/EducationandOutreach.aspx>

Complying with this requirement is considered part of the work under this Contract. Contractor delay in complying with this requirement may cause the State to delay final payment and Contract Acceptance. The State may also report non-compliance to the Department of Revenue, which may result in enforcement action by the Department of Revenue.

# Workmanship and Licenses.

Employ personnel skilled and experienced for the specific task required. Licensed journeymen shall be employed where required by law. Workmanship shall be of the highest quality and performed in a neat and expeditious manner. Qualified supervision shall be at the site when work is progressing.

All Contractors shall conform to the labor laws of the State of Minnesota and all other laws, ordinances, and legal requirements affecting their work in Minnesota.

[Tailor the following term to your specific solicitation.]

# Response Time.

Upon receipt of a purchase order, the Contractor shall contact the ordering entity where work is to be performed or materials to be delivered within [ ] calendar days acknowledging the receipt of order and to schedule work start dates. In the event the ordering entity determines that expedited action is required, the Contractor shall respond within [ ] hours. Orders requiring expedited action will indicate “expedited action response required” on the purchase order. If after an installation date has been established and the ordering entity requires a delay in the work, the ordering entity may, without penalty, delay installation for a period mutually agreed upon by both parties. Once the project is started, work is to proceed on a continuous basis. Interruptions in finishing a project must be approved by the ordering entity.

All products must be installed with a minimum of interruption to the normal business operation. All work will comply with the applicable national, state and local codes and regulations. If normal service must be disrupted, the Contractor must consult with and obtain the approval of the ordering entity on how the service disruption will be handled prior to scheduling the work. Service Center assistance must be available 7 days a week, 24 hours a day. The Contractor must be able to provide first response to all service calls within one (1) hour. First response is defined as a returned phone call, or diagnostic and troubleshooting, and/or providing anticipated resolution.

# Delivery, Storage and Handling.

The Contractor shall be responsible to inspect all components on delivery to ensure that no damage occurred during shipping or handling for furnish and installation projects. For equipment only purchases, the ordering entity shall be responsible to inspect all components on delivery. Materials must be stored in original undamaged packaging in such a manner to ensure proper ventilation and drainage, and to protect against damage, weather, vandalism, and theft until ready for installation.

# Utilities.

Contractor shall protect above and below grade utilities in conformance with Minnesota Department of Transportation (MnDOT) Specification 1507 and shall contact Gopher One Call at 651-454-0002 / 800-252-1166 (website: [www.gopherstateonecall.org](http://www.gopherstateonecall.org)) to locate on-site utilities. Contractor shall provide the ordering entity with the Gopher State One Call locates confirmation number.

# Fire Safety Instruction for Contractors.

Contractors are required to adhere to all current codes, standards and safety rules that are in effect at the time of the work being performed. These include, but are not limited to, building codes, electrical codes, safety codes, and ordering entity’s personnel/property protection codes. Contractors are responsible for obtaining the ordering entity’s personnel/property protection requirements from the facility in which they are performing the work. Contractor will also implement a “hot-work” and/or “impairment” safety program during the performance of their work if applicable.

# Right to Inspect and Require Work.

Any work performed that is not in conformance with the specifications of the Contract, or the legal requirements governing the work, shall be subject to rejection. All rejected work shall be immediately replaced or modified at the Contractor’s expense so as to conform to the Contract. If the State determines that the work being performed by the Contract is not in strict conformance with the Contract, the State shall have the right to order the work of the Contractor wholly or partially stopped, or suspended until any nonconforming work has been corrected. Such stoppage or suspension shall not invalidate or modify any terms of the Contract and no extra compensation or reimbursement will be allowed to the Contractor by reason of such stoppage or suspension.

# Conduct.

All employees of the Contractor(s) shall conduct themselves in a professional and courteous manner at all times. Personnel deemed unacceptable by the State shall be replaced immediately. The State reserves the right to reject any employee.

# Safety.

The ordering entity agrees to furnish safe and free access to all areas of work covered by this Contract for the purpose of executing the terms of this Contract. At its option, the ordering entity may request, and the Contractor will comply, that a member of the Contractor’s staff be removed from working on projects for unsafe practices, violations of the Contract procedures, or other problems.

The Contractor shall take all reasonably necessary steps to provide for the safety of, and prevent damage, injury, or loss to:

* All persons
* The building and all other real or personal property at the work site.
* All equipment at the building, under the care, custody or control of the Contractor or any of its employees.

The Contractor shall promptly notify the ordering entity if, during the term of the Contract, the Contractor observes or otherwise learns of any conditions which:

* In the Contractor’s judgment, poses a threat to the safety of person or property;
* Adversely affects the equipment; or
* Is in violation of any applicable codes or regulations.

# Administrative Personnel Changes.

The Contractor must notify the State’s Authorized Representative of changes in the Contractor’s key administrative personnel, in advance and in writing. Any employee of the Contractor who, in the opinion of the State of Minnesota, is unacceptable, shall be removed from the project upon written notice to the Contractor. In the event that an employee is removed pursuant to a written request from the State’s Authorized Representative, the Contractor shall have 10 working days in which to fill the vacancy with an acceptable employee.

# Damage.

At its expense, the Contractor shall promptly remedy and repair all damage or loss to any property caused by the Contractor. The Contractor shall not be liable for any loss, delay, injury, or damage, whether direct or consequential, that may be caused by conditions beyond its control relating to acts of government, strikes, lockouts, fire explosion, theft, riot, civil commotion, war, malicious mischief, floods, or other acts unforeseen, or other situations beyond the Contractor’s control. The Contractor shall not be responsible for damage or loss attributable to the fault or negligence of the ordering entity. The Contractor shall not be held liable for back charges if the delay of response time is caused by strikes, any preference or priority allocation order issued by the government, or any unforeseeable cause beyond the Contractor’s control, or any cause the State determines justifies the delay.

# Hazardous Materials.

If hazardous materials are suspected or discovered during work operations, stop work and notify the ordering entity. Hazardous materials include, but are not limited to, asbestos containing materials, lead, PCB’s, pollutants, contaminated soil, and mercury. Do not proceed with work until a written notice to continue work on the project is received by the ordering entity.

# Delays.

The Contractor shall notify the ordering entity immediately of any prospective delays in the completion of the projects. Such notice shall be given in writing as soon as the contractor recognizes the prospect of delay. The ordering entity must approve all such requests.

# Work Not Permitted or Work Requiring Ordering Entity Approval.

Repair work, new installations or extension of an existing system covered by this Contract does not extend to modification of building structural, mechanical, or electrical components, even though this work may be incidental to – and or necessary for – repair/modification unless approved in advance by ordering entity or already specified by the Contract.

# Change Orders.

The Contractor can only proceed with work beyond the work authorized by a purchase order if the ordering entity has approved the change and a Change Orders is being issued. The ordering entity may authorize change orders in writing or verbally.

The ordering entity may require or the Contractor may make a written request (describing the nature of the proposed change) for certain changes in the scope of work described in a purchase order. If the ordering entity agrees to the changes and the costs for the changes, a Change Order will be issued. Change Orders will only be considered if they are based on materially different work conditions that could not have been expected from available information at the time the original purchase order was issued. Verbal authorizations for a Change Order must be followed up with a written Change Order as soon as possible.

# Security.

Agencies will include their security requirements, if any, on each purchase order that they issue. Some Agencies require that the Contractor and its employees entering their facilities possess a current photo identification card or no entry will be allowed. Some secure facilities require that all vehicles entering and leaving the facility be searched. The Contractor and its employees shall note that introducing contraband upon the grounds of such secure facilities is a violation of State Law and could result in prosecution.

# Removed Items and Clean-Up.

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon completion of the work, the Contractor shall remove and legally dispose of waste materials, rubbish, the Contractor’s tools, equipment, machinery, and surplus materials from and about the project premises and surrounding area daily. The cost of cleanup performed by the ordering entity as a result of the Contractor’s failure to provide the cleanup required by this solicitation shall be deducted at the actual cost to the State from the Contract sum.

When removal and disposal of non-hazardous debris is performed on a job site, receipt for disposal and manifest documentation must be included with the final invoice.

# Submittals.

Contractor must submit all documents as required by the contract. Documents required to be submitted include, but are not limited to:

* Minnesota Department of Revenue online “Contractor Affidavit” form or paper IC134 form as required by the Compliance with Tax Laws Requirement clause in Exhibit A of the Contract.Email the State of Minnesota Prevailing Wage Payroll Report and Statement of Compliance form as required by the Contract to the address listed on the purchase order.

[Use this language below if your solicitation includes pw rates for multiple counties. If only one county then delete language below and insert the pw rates here. Rates can be found on DLI’s website at [**http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information**](http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information) **]**

Exhibit A, Supplement 1

**MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY PREVAILING WAGES FOR STATE FUNDED CONSTRUCTION PROJECTS**

-----------------------------------------------------------------

The prevailing wage rates for [list # of counties] counties are detailed in Exhibit A - Supplement 1, which is attached and incorporated herein. Due to the large volume of pages, Responders are encouraged download and save a copy to their desktop, and print a hardcopy of the counties in which they are providing a response price.

These rates will apply for the term of the awarded contracts.

[Delete entire page unless estimated value of the construction solicitation is close to $50,000. Add Responsible Contractor SWIFT Bid Factor if this form is included in the solicitation.]

Exhibit A, Supplement 2

**FIRST-TIER SUBCONTRACTORS LIST**

**THIS FORM MUST BE COMPLETED PRIOR TO CONTRACT EXECUTION**

PROJECT NUMBER [Enter Solicitation Reference Number]

PROJECT NAME [Enter Solicitation Title]

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| --- | --- | --- | --- |
| FIRST TIER SUBCONTRACTOR NAMES (Legal name of company as registered with the Secretary of State) | Name of city where company home office is located | % of value of Contract | \*Is the First Tier Subcontractor a TG/ED/VO? |
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Attach additional sheets as needed for submission of all first-tier subcontractors.

\*TG/ED/ VO = Certified Targeted Group Business, Economically Disadvantaged Business, and Veteran-Owned Business

**I certify by signing this form under oath that I am an owner or officer of the company, and that:**

All first-tier subcontractors listed abovehave verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in **Minn. Stat. § 16C.285.** A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier and motor carriers, pursuant to subdivision 3, clause (7).

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Authorized Signature of Owner or Officer Company Name

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Print Name Date

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Title

 [Delete entire page unless estimated value of the construction solicitation is close to $50,000. Add Responsible Contractor SWIFT Bid Factor if this form is included in the solicitation.]

Exhibit A, Supplement 3

**ADDITIONAL SUBCONTRACTORS LIST**

**SUBMIT WITHIN 14 DAYS OF RETAINING ADDITIONAL SUBCONTRACTORS DURING PROJECT**

This form must be submitted to the Project Manager or individual as identified in the solicitation document.
See Minn. Stat. § 16C.285, subd. 5.

PROJECT NUMBER [Enter Solicitation Reference Number]

PROJECT NAME [Enter Solicitation Title]

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| FIRST TIER SUBCONTRACTOR NAMES (Legal name of company as registered with the Secretary of State) | Name of city where company home office is located | % of value of Contract | \*Is the First Tier Subcontractor a TG/ED/VO? |
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Attach additional sheets as needed for submission of all first-tier subcontractors.

\*TG/ED/ VO = Certified Targeted Group Business, Economically Disadvantaged Business, and Veteran-Owned Business

**I certify by signing this form under oath that I am an owner or officer of the company, and that:**

All additional subcontractors listed above verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in **Minn. Stat. § 16C.285.** A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier and motor carriers, pursuant to subdivision 3, clause (7).

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Authorized Signature of Owner or Officer Company Name

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Print Name Date

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Title

Exhibit B: Insurance Requirements

[OPTION ONE: Use the language below if insurance is not required.]

This Contract does not have any insurance requirements.

[OPTION TWO: 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.]

# Notice to Contractor.

## 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 Contract.

## The Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of this Contract, unless otherwise specified in this Contract

## The failure of the Contractor to provide a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the State to the Contractor to provide such insurance.

## The State reserves the right to immediately terminate this 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.

## [Option if using dealers] If the Contractor uses another entity, including but not limited to a dealer, reseller, or distributor (collectively referred to as “Contractor’s reseller”) to provide goods or services under this contract, the following terms apply:

### Because the Contractor’s reseller(s) are independently owned and operated, and maintain their own insurance, the Contractor’s reseller's insurance coverage must be evidenced by its own Certificate of Insurance. The Contractor’s reseller’s Certificate of Insurance must meet all the insurance requirements and limits set forth in the Contract.

### The Contractor shall collect, review, approve, and maintain the applicable Certificates of Insurance, including but not limited to General Liability, Auto Liability, Umbrella, Workers’ Compensation, and Garagekeepers or Property of Others, for all Contractor’s resellers that will be providing goods or services under this contract. The Contractor acknowledges compliance with this provision. The Contractor must provide copies of the dealers’ insurance documentation to the State upon request.

### If a claim is made against a Contractor’s reseller, and the Contractor’s reseller’s insurance coverage did or does not cover the claim, the Contractor is responsible for the claim because the contract is with the Contractor. The Contractor must pay any uninsured claims out-of-pocket. The State may enforce the indemnity clause in the contract.

# Notice to Insurer.

## 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.

## Insurance certificate holder should be addressed as follows:

State of Minnesota
[Insert agency contract holder’s address]

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

## Contractor’s policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor’s performance under this Contract.

## 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;

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

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

## Contractor’s policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.

## 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.

## An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor’s policy limits to satisfy the full policy limits required by the Contract.

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

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

$2,000,000 – per occurrence

$2,000,000 – annual aggregate

$2,000,000 – annual aggregate – applying to Products/Completed Operations

The following coverages shall be included:

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

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

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

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

Evidence of Subcontractor insurance shall be filed with the Contractor.

## [Use for equipment. If using, delete the Commercial General Liability Insurance term above in its entirety.] **General Liability or Garage Liability Insurance.** The Contractor, or their Subcontractor, shall maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract.

General Liability insurance is required for Contractors, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for Contractors, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State. 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 & Advertising Injury
* Blanket Contractual
* Products and Completed Operations
* **State of Minnesota Named as an Additional Insured**

## [Use for equipment. If using, delete the Commercial Automobile Liability Insurance term above in its entirety.] **Automobile Liability or Garage Liability Insurance.** [Auto Liability insurance is only applicable if the contractor, contractor’s employees, or subcontractors will be driving on state property or will be using, owned, hired, or non-owned vehicles to conduct business on behalf of the state.] The Contractor, or their Subcontractor, shall maintain insurance to cover liability arising out of the ownership, operation, use, or maintenance of all owned, non-owned and hired automobiles.

Auto Liability insurance is required for Contractors, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for Contractors, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State.

Insurance minimum limits are as follows: $2,000,000 - Per Occurrence - Bodily Injury and Property Damage Combined Single Limit

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

Evidence of Subcontractor insurance shall be filed with the Contractor, or as directed by the State.

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

$100,000 – Bodily Injury by Disease per employee

$500,000 – Bodily Injury by Disease aggregate

$100,000 – Bodily Injury by Accident

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

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

## **Garagekeepers Liability or Property of Others Insurance or Equivalent.** [Note: Property of Others Insurance is not required for service work being provided under warranty.] The Contractor, or their Subcontractor, shall maintain insurance to cover loss or damage to Owner’s autos or equipment in the care, custody, and control of Contractor, or their Subcontractor, if ANY warranty or service work is performed by the Contractor, or their Subcontractor. The Contractor is solely responsible for the coverage equal to that of the actual cash value of vehicles/mobile equipment in the Contractor, or their Subcontractor’s, care, custody and control at any given point in time.

Garagekeepers Liability insurance or equivalent is required for Contractors, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State.

Property of Others insurance or equivalent is required for Contractors, or their Subcontractor, performing non-warranty service work on state-owned equipment in the Contractor’s possession.

**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.

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

$2,000,000 - per claim or event
$2,000,000 - annual aggregate

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

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

## **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.

## **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.

## **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.

**Note:** For the following types of insurance, contact Risk Management Division for detailed requirements:

* Aviation Insurance (Also see Aviation Insurance Requirements in ALP Manual, Appendix C, Insurance, and Appendix D, Forms):
* Aircraft Liability
* Aircraft Passenger Liability
* Airport/Premises Liability
* Non-Owned Aircraft Liability
* Non-Owned Aircraft Hull
* Hangarkeeper’s Liability
* Crime Insurance
* Fire Legal Liability Insurance
* Installation Floater Insurance
* Pollution Liability Insurance
* Sexual Molestation Insurance
* Watercraft Liability Insurance

**CONSTRUCTION INSURANCE REQUIREMENTS**

The Contractor shall maintain insurance to cover claims which may arise from operations under this Contract, whether such operations are by the Contractor, their Subcontractor, or by anyone directly or indirectly employed under this Contract.

The Contractor shall not commence work under the Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. The Contractor, under this Contract, can provide applicable services to the State of Minnesota and/or CPV members, hereinafter referred to as Owner.

All policies shall remain in force and effect throughout the term of the Contract.

**REQUIREMENTS FOR THE CONTRACTOR:**

The Contractor’s policy(ies) shall be primary and non-contributory insurance to any other valid and collectible insurance available to the state of Minnesota with respect to any claim arising out of this Contract.

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

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 MN Department of Commerce if they are not rated by AM Best.

Certificates of Insurance acceptable to the State of Minnesota shall be submitted prior to commencement of the work under this contract. If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor’s policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota.

**NOTICE TO THE CONTRACTOR:**

The failure of the State of Minnesota to obtain Certificate(s) of Insurance, for the policies or renewals thereof or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the Contractor to provide such insurance.

The Owner will reserve the right to immediately terminate the Contract if the Contractor is not in compliance with the insurance requirements, and the Owner retains all rights to pursue any legal remedies against the Contractor. In the event of a claims dispute, all insurance policies must be open to inspection by the state, and copies of policies must be submitted to state’s authorized agent upon written request.

The insurance and insurance limits required herein shall not be deemed as a limitation on the Contractor’s liability with regard to the indemnities granted to the Owner under the contract.

**NOTICE TO INSURER:**

The Contractor’s insurance company waives its right to assert the immunity of the State as a defense to any claims made under said insurance. Contractor’s insurance company is notified that the liability of their policyholder is not limited by statute, and as a result, they are precluded from limiting claim payments based on any assumption that they are protected by immunity of the State.

Coverage under the General Liability policy(ies) of the Contractor will be as broadly construed for the Owner as is available to the Contractor.

The liability limits specified by the contract are the minimum limits required, and any and all additional limits provided to the Contractor will be available on an excess, umbrella or other basis, to the Additional Insured for any and all covered claims.

**POLICY REQUIREMENTS:**

# Workers’ Compensation Insurance:

## Contractor shall provide workers’ compensation insurance for all employees and shall require any Subcontractor to provide workers’ compensation insurance in accordance with the statutory requirements of the State of Minnesota and must include:

### Part 2, Employers Liability including Stop Gap Liability for monopolistic states, at limits of not less than:

$100,000 – Bodily Injury by disease per employee

$500,000 – Bodily Injury by disease aggregate

$100,000 – Bodily Injury by accident

### Coverage C: All States Coverage

* If applicable, USL&H, Maritime, Voluntary and Foreign Coverage.
* A waiver of subrogation in favor of the State of Minnesota, as Owner.

If Contactor is self-insured for its obligation under the Workers’ Compensation Statutes in the jurisdiction where the project is located, a Certification of the Authority to Self-Insure such obligations shall be provided.

Evidence of Subcontractor insurance shall be filed with the Contractor.

## Statutory Compensation Coverage. If Minn. Stat. § 176.041 exempts the Contractor from Workers’ Compensation insurance or if the Contractor has no employees in the State of Minnesota, the Contractor must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excluded the Contractor from MN 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 included herein and provide the State of Minnesota with a certificate of insurance.

# Automobile Liability Insurance:

The Contractor shall maintain insurance to cover liability arising out of the operations, use, or maintenance of all owned, non-owned, and hired automobiles.

## Minimum Limits of Liability:

## $2,000,000 - Per Occurrence combined Single Limit Bodily Injury and Property Damage

## Coverages:

* Owned Automobile
* Non-owned Automobile
* Hired Automobile
* Waiver of subrogation in favor of the State of Minnesota

[If the two pollution endorsements listed below are not required then delete the endorsements from this page. If the Contractor is not hauling pollutants, the CA 9948 and the MCS 90 endorsements are not necessary. Confirm with your agency SME and Risk Management.]

* CA 9948 Endorsement – Pollution Liability – Broadened Coverage (or equivalent)
	+ CA 9948 is an endorsement that is attached to an Automobile Liability policy for Contractors who are handling pollutants. This endorsement extends the Automobile Liability policy to cover liabilities incurred as a result of the discharge, dispersal, seepage, migration, release or escape of pollutants that are part of the contract work, which are being transported, towed by, handled, stored, disposed of or processed in or upon a covered vehicle, if they are upset or overturned.
* MCS 90 Endorsement
	+ MCS-90 is an endorsement that is attached to the Automobile Liability policy of motor carriers as set forth by the Motor Carrier Act of 1980. The endorsement assures compliance by the insured, within the limits stated therein, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration (FHWA) and the Interstate Commerce Commission (ICC).

# Commercial General Liability:

The Contractor shall maintain insurance to cover claims arising from operations under this Contract, whether such claims are by the Contractor, Subcontractor, Sub-Subcontractor or by anyone directly or indirectly employed under this Contract.

## Minimum Limits of Liability:

$2,000,000 - Per Occurrence

$2,000,000 - Annual Aggregate

$2,000,000 - Annual Aggregate applying to Products and Completed Operations

$50,000 - Fire Damage (any one fire)

$5,000 - Medical Expense (any one person per occurrence)

## Coverages

* Premises and Operations Bodily Injury and Property Damage
* Personal Injury & Advertising Injury
* Products and Completed Operations Liability
* Contractual Liability as provided in ISO form CG 00 01 04 13 or its equivalent.
* Pollution exclusion with standard exception as per Insurance Services Office
* (ISO) Commercial General Liability Coverage Form – CG 00 01 04 13 or equivalent
* Independent Contractors – Let or Sublet work
* Waiver of Subrogation in favor of the State of Minnesota
* Officers and Employees of the State of Minnesota shall be named as Additional Insureds, to the extent permitted by law, for claims arising out of the Contractor’s negligence or the negligence of those for whom the Contractor is responsible for both ongoing and completed operations.

Contractor agrees its coverage will not contain any restrictive endorsement(s) excluding or limiting Broad Form Property Damage (BFPD) or Explosion, Collapse, Underground (XCU).

# UMBRELLA OR EXCESS LIABILITY

An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor’s policy limit to satisfy the full policy limits required by the Contract.

Officers and Employees of the State of Minnesota shall be named as Additional Insureds, to the extent permitted by law, for claims arising out of the Contractor’s negligence or the negligence of those for whom the Contractor is responsible for both ongoing and completed operations.

[If pollution liability insurance is not required then delete the following requirement from this page. Confirm with your agency SME and Risk Management.]

# POLLUTION LIABILITY INSURANCE

The Contractor shall maintain Pollution Liability insurance (or equivalent pollution liability coverage endorsed on another form of liability coverage, such as general liability or professional errors and omissions policy) and in case any work is subcontracted, the Contractor will require the subcontractor to provide Pollution Liability insurance, unless the requirement is noted as waived in these specifications for specific types of work. Unless otherwise specified, the insurance **minimum** limits of liability shall be as follows:

 $2,000,000 – Per Occurrence

 $2,000,000 – Annual Aggregate

The following coverages shall be included:

* Policy will include non-owned disposal site Pollution Liability.
* Policy will not contain a lead exclusion.
* Waiver of subrogation in favor of the State of Minnesota

Officers and Employees of the State of Minnesota shall be named as Additional Insureds, to the extent permitted by law, for claims arising out of the Contractor’s negligence or the negligence of those for whom the Contractor is responsible for both ongoing and completed operations.

[Contact Risk Management before you finalize your solicitation to confirm whether builder’s risk is necessary.]

# BUILDER’S RISK INSURANCE [Instruction: Choose either Option 1 or Option 2] [Option 1]

It is the agency’s responsibility to determine if there is a need for such insurance coverage on the work. Builder’s Risk insurance is needed for a building under construction or when it is being renovated or remodeled. It is also needed when machinery and/or equipment is installed as a permanent fixture of real property, unless it is located underground. If it is determined by the agency that Builder’s Risk insurance is necessary for a particular project, the work cannot be performed under this Contract. The agency should instead contact Real Estate and Construction Services and arrange to do the work as a building construction project. MNDOT, DNR, Military Affairs would not contact Real Estate and Construction Services to arrange to have this work done. They would follow the construction purchasing authority that has been delegated to them by the Department of Administration for this construction work.

CPV members must determine if Builder’s Risk insurance is necessary for a project or not. If they determine it is necessary, they must obtain coverage through their own providers.

# BUILDER’S RISK – BY CONTRACTOR [Option 2]

The Contractor shall be responsible for providing and maintaining “All Risk” or equivalent Builder’s Risk policy insuring the interest of the Owner, Contractor, and any tier of Subcontractor. Coverage on an “All Risk” or equivalent basis shall include the perils of flood, earthquake and pollution cleanup expense. Builder’s Risk limit of liability shall be equal to the amount of the contract. Any deductible shall be the sole responsibility of the Contractor and shall not exceed $10,000 without the written approval of the Owner.

## The Contractor shall be responsible for providing and maintaining “All Risk” or equivalent Builder’s Risk policy insuring the interest of the Owner, Contractor, and any tier of Subcontractor. Coverage on an “All Risk” or equivalent basis shall include the perils of flood, earthquake and pollution cleanup expense. Builder’s Risk limit of liability shall be equal to the amount of the contract. Any deductible shall be the sole responsibility of the Contractor and shall not exceed $10,000 without the written approval of the Owner.

## Any property not covered by the Builder’s Risk policy, such as the Contractor’s or any tier of Subcontractor’s licensed motor vehicles or personal property, including job trailers, machinery, tools, equipment and property of a similar nature not destined to become a part of the project, shall be the responsibility of the Contractor or Subcontractor at any tier, and such person or organization may self insure or provide other insurance at its option for the same. The Contractor shall be responsible for providing and maintaining “All Risk” or equivalent Builder’s Risk policy insuring the interest of the Owner, Contractor, and any tier of Subcontractor. Coverage on an “A.”

## Waiver of Liability: Absent Owner or Architect sole negligence or breach of specific Contractual duty specifically and logically related to the damage or loss, the Owner or Architect will not be responsible for loss or damage to property of any kind owned, borrowed, rented or leased by the Contractor, Subcontractors of all tiers and/or the Contractor’s/Subcontractors employees, servants or agents.

## Waivers of Subrogation: The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors of all tiers and (2) the Architect, and the Architect’s Subcontractors of all tiers for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to the provisions of this section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner or Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, and the Architect’s Subcontractors of all tiers, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

## All losses and claims shall be immediately reported to the Contractor, Owner and applicable insurance carrier, under loss notice procedures as directed by the Contractor.

## Any loss insured under this section is to be adjusted with the Contractor and made payable to the Contractor as trustee for all insured parties, as their interests may appear, subject to the requirements of any applicable mortgage clause. The Contractor shall pay the Owner a just share of any insurance moneys received, and by appropriate agreement, written where legally required for validity, shall require the Contractor to make just share payments to the Subcontractors and lower tiered Sub-Subcontractors in similar manner.

## Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise.

## Boiler and Machinery Insurance. The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owners, Contractor, Subcontractors and Sub-Subcontractors in the Work, and the Owner and Contractor shall be named insureds.

## Loss of Use Insurance. The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused.

Exhibit C: Specifications, Duties, and Scope of Work

Exhibit D: Pricing

# Contract Pricing. [Instruction: add, delete, or modify sections as required by solicitation or industry.]

## In General. Prices listed take into consideration all inherent costs of providing the requested goods and services. The Contractor agrees to pay any and all fees, including, but not limited to: duties, custom fees, permits, brokerage fees, licenses and registrations, government taxes, overhead, profit, parking permits, proper disposal of materials, insurance payments. The State will not pay any additional charges beyond the price(s) listed, unless otherwise provided for by law or expressly allowed by the Contract. **Prices listed within Exhibit D are maximum prices. These maximum prices shall remain firm for the initial term of the Contract.** The Price List may not include any additional terms or conditions. A unit price and a total for the quantity must be stated for each item quoted. Prices must be quoted in United States currency. Any increase to Contract pricing requires a duly executed amendment to this Contract. Contractor may provide lower pricing at its discretion without requiring a duly executed amendment to the Contract.

[Optional. Instruction: Use when pricing is captured through each SWIFT line included in the solicitation. Transfer the pricing as displayed in the example below.]

SWIFT Line Description Unit Price

1 Widget EA $1.00

## [Optional] Discount-off List Pricing**.** Prices offered for equipment are a percent (%) discount from the Manufacturer’s (Original Equipment Manufacturer – OEM) List Price or Dealer’s List Price. The discount offered must remain firm, and may be increased, during the life of the Contract. After the initial term of the Contract, the manufacturer’s or dealer’s price list may be updated upon mutual agreement by the State and the Contractor through a fully executed amendment.

| **Product** | **Vendor Cost from Supplier** | **Discount-off List Offered** | **Computation** | **State****Contract Price** |
| --- | --- | --- | --- | --- |
| XYZ Tablet | $300.00 | 3.5% | $300.00 – (300 x 0.035) = $289.50 | $289.50 |

## [option] Cost-Plus Pricing. Cost is defined as the actual cost the Contractor pays the supplier for goods or services the State orders, minus any applicable taxes. Only costs specifically detailed in the billing statement, quote, or invoice from the supplier will be subject to the cost-plus percentage detailed on Contract. If a quote is issued, the invoice price cannot exceed the quoted price.

The product purchase price from the supplier must be verifiable with a quote, billing statement, or invoice upon request from the State or Ordering Entity.

The cost-plus pricing must be computed in the same manner as shown in the example below:

| **Product** | **Vendor Cost from Supplier** | **Cost Plus % Offered** | **Computation** | **State****Contract Price** |
| --- | --- | --- | --- | --- |
| XYZ Tablet | $300.00 | 3.5% | $300.00 x 1.035 = $310.50 | $310.50 |

## [Optional] Hourly Rate Pricing. This is the rate(s) detailed in the Contract for each service or category of service provided by Contractor. State will not pay for travel-related expenses, travel time, meals, lodging, or idle time.

# Installation Services.

[Option 1] The Contractor must not charge a separate fee for an installation or mounting service. The price for equipment, attachments, or options includes all installation and mounting costs.

## [Option 2] The Contractor must apply a charge as a separate line item for installation or mounting services if such service is requested in writing by the ordering entity. The price for equipment, attachments, or options does not include installation or mounting costs unless otherwise indicated in the Contract or Price Schedule.

# **[Optional if applicable] **Price Schedule(s)**.**

**The following price schedule(s) are hereby attached and incorporated into this Exhibit D as follows:**

## [Name of Price Schedule A]

## [Name of Price Schedule B]

## [Name of Price Schedule C]

# Prompt Payment Terms.

Contractor’s payment terms are [to be completed based on response to the solicitation, (i.e., Net 30, 1% in 30 Net 31, etc.).]

# Delivery. [for goods, delete if contract is for services only]

Contractor must deliver the ordered goods [to be completed based on response to the solicitation (i.e., 10 days, 6 weeks, etc.)], after receipt of order (ARO).

# Transportation.

[Option 1, FOB Destination, prepaid and allowed] All prices must be FOB Destination, prepaid and allowed (with freight included in the price), to the ordering entity’s receiving dock or warehouse, or as otherwise instructed on the purchase order by the ordering entity. In those situations in which the “deliver-to” address has no receiving dock or agents, the Contractor must be able to deliver to the person specified on the purchase order.

[Option 2: FOB Destination, prepaid and added] All prices must be FOB Destination, prepaid and added (with freight allowed as a separate line item), to the ordering entity’s receiving dock or warehouse, or as otherwise instructed on the purchase order by the ordering entity. In those situations in which the “deliver-to” address has no receiving dock or agents, the Contractor must be able to deliver to the person specified on the purchase order. The ordering entity may use the Contractor for delivery, may pick up the equipment, or may contract with another entity for delivery.

[Optional Addition to Option 2] Freight under this contract is Price per Loaded Mile. Price per Loaded Mile is the delivery charge per loaded mile from the delivery starting point (city, state, and zip code) to the ordering entity’s delivery point. Freight must be included on the quote, and the amount invoiced may not exceed the amount quoted for freight unless the ordering entity agrees otherwise in writing. The State will not accept a flat, fixed price for shipping. If the Price per Loaded Mile is “No Charge” or “$0.00,” or that field on the Price Schedule is blank, delivery is included in the product cost. Mileage distance will be determined using an industry-standard product.

# ****Taxes.****

[Option 1: Direct Pay applies.] Do not add sales tax to the prices being offered. State Agencies hold a Direct Payment Authorization Letter which is used to pay applicable taxes directly to the Department of Revenue. Contractors may go to <http://www.revenue.state.mn.us> to learn about the applicable sales tax (search “Fact Sheet 142”).

[Option 2: Contractor collects tax.] Contract price and quoted price must include taxes.

# Invoice Requirements.

Contractor hereby waives the right to enforce any term which contradicts or modifies any term of the solicitation or any Contract that may result, including subsequent amendments to the Contract, or would result in an unencumbered expense if enforced against the state. Contract quote and invoice must contain, at a minimum: [review invoice requirements and modify to fit scope of the project.]

* Customer name
* State Contract number field
* Item/service description
* Item quantity or service hours
* List price [Cost]
* Contract discount [Contract percentage markup]
* Price after discount [Price after cost plus markup]

[Modify or delete the following pricing clauses for construction solicitations as needed to fit the scope of the solicitation. Discuss with your supervisor if you need to specify the difference between consumable supplies and unique materials for cost-plus.]

# Contract Pricing. [Pricing for use with Construction]

[Option 1 – Pricing for use when awarding a one-time construction project as lump sum bid]

Contract prices must take into consideration all inherent costs of providing the requested goods or services. The Contractor agrees to pay any and all fees, including, but not limited to: government taxes, overhead, profit, parking permits, proper disposal of materials, insurance payments, licenses, and registrations. The State will not pay any additional charges beyond the price(s) listed in the Contract, unless otherwise provided for by law or expressly allowed by the terms of the Contract.

The Contractor is to include in the response price all applicable State or Federal sales, excise or use tax on all materials, supplies, and equipment that are to be utilized on this project.

The total cost for all labor, materials, equipment, and transportation necessary for [insert name of project]: $[insert the responders total bid price]

[Option 2 – Pricing for use with longer term construction contracts that include multiple price items such as labor, materials, mobilization, or mileage.]

Contract prices must take into consideration all inherent costs of providing the requested goods and/or services. The Contractor agrees to pay any and all fees, including: government taxes, overhead, profit, parking permits, proper disposal of materials, insurance payments, licenses and registrations. The State will not pay any additional charges beyond the price(s) listed in the contract, unless otherwise provided for by law or expressly allowed by the terms of this contract.

## Labor. The Contractor’s hourly price shall include, but is not limited to, prevailing wage reporting requirements, equipment and tools normally associated with [ ], etc. The certified prevailing wage rates in effect at the time the solicitation is advertised apply for the duration of the contract.

## Permits. Permits required by local authorities shall be secured and paid for by the Contractor. The Contractor will be reimbursed for the actual cost of such permits if the cost is itemized and evidence of the permit and its cost is attached to the invoice to the ordering entity.

## Materials. Materials purchased through this Contract must be for furnish and installation. Materials will be furnished on a cost-plus percentage markup basis. Cost is defined as the actual cost the Contractor pays the manufacturer/supplier for the goods/services, less any applicable taxes. Only costs specifically detailed in the billing statement, quote, and/or invoice from the supplier will be subject to the cost plus percentage mark-up detailed on Contract. Copies of the supplier’s invoice must be attached to the invoice to the ordering entity.

## Contractor pays all freight and adds freight charges to quote/invoice as a separate line item. Freight must be quoted/invoiced as a direct pass through cost. No markup is allowed on freight. Freight charges invoiced may not exceed the quoted price. Upon request by the ordering entity, the Contractor must furnish third party freight quote and/or invoice.

## Competitive Pricing.The State reserves the right to require Contractors to secure competitive bids for materials being furnished, or if there are multiple Contractors assigned to a county, the State reserves the right to obtain a written price quote from multiple Contractors. If the Contractor is required to secure competitive bids for materials, the State may request to review documentation to verify that competitive procurement practices have been used.

[Verify the tax requirements that are applicable to the solicitation scope of work, as tax requirements may vary depending on the tasks/trades used to perform the work.]

## Taxes.

* **Furnishing Product Only**. **DO NOT** add sales tax to the prices being offered. Effective July 1, 1995, State Agencies use a Direct Pay Authorization to pay the applicable sales and use tax directly to the Department of Revenue under Minnesota Tax ID 4405717. Although it is not required by the Department of Revenue, State Agencies will complete and submit the ST3 Form to the vendor upon request. See <http://www.revenue.state.mn.us>.
* **Furnishing and Installing Product.** The State’s Direct Pay permit will not apply for orders against a contract awarded through this solicitation. The Responder must include in their response prices any applicable State or Federal sales, excise, or use tax on all materials, supplies, and equipment that are to be utilized. If orders are issued by CPV members, the Contractor should confirm all of the tax requirements with the ordering entity.

[Tailor the following mileage/mobilization/travel terms to your specific solicitation. Your scope of work may require just one of these terms below or a combination. Review with your supervisor if you have questions on which term is appropriate for your solicitation.]

[Option 1]

## Mileage. The State will pay mileage when travel to and from the job site exceeds 100 miles round trip per day (i.e. accumulated mileage). Each mile exceeding 100 accumulated miles per day may be charged the per mile rate. The accumulated mileage will be determined using the Contractor's closest dispatch center/service location to the job site. The State reserves the right to use Google Maps™ to determine mileage. The State will not pay mileage, labor costs, or any overtime labor associated with travel to pick up materials.

The Responder will provide a mileage rate multiplier that will be used to calculate the Contractor’s total reimbursable mileage rate for this contract.

Formula used to calculate total reimbursable mileage rate:

(*Current Mileage Rate) x (Mileage Rate Multiplier) = (Reimbursable Contract Mileage Rate)*

Example: **$[enter current mileage rate, see link below]** x $[ ]= $[ ] is the reimbursable mileage rate

The current mileage rate can be found on the State of Minnesota Commissioner's Plan, posted on the Office of State Procurement (OSP) website: <http://www.mmd.admin.state.mn.us/commissionersplan.htm>.

State of Minnesota Commissioner's Plan mileage rate will be adjusted annually, but the mileage rate multiplier will not be allowed to increase over the life of the Contract. However, if the Contractor wishes to decrease the multiplier, the State will accept this by executing a Contract Amendment and the decrease must be offered to all users of the Contract.

[Option 2]

## Mobilization. The mobilization rate provided on the Price Schedule includes costs to mobilize personnel and equipment to the project site including set-up and tear-down. The State will pay only one mobilization charge per project.

Any mobilization or mileage costs exceeding the quote amount agreed upon must be approved in writing by the ordering entity before being charged.

[Option 3]

## Travel. Only expenses detailed on the Price Schedule or per the State of Minnesota Commissioner’s Plan will be allowed under the Contract. Any agreed upon charges for travel mileage rates, lodging, and meal expenses are per the current State of Minnesota Commissioner’s Plan, posted to the Office of State Procurement (OSP) website: <http://www.mmd.admin.state.mn.us/commissionersplan.htm>.

Per Diem costs for meals may be charged for a project but require prior written approval from the ordering entity. Per Diem for meals must be estimated and included as part of the quote. The State is to be billed at the actual cost or the maximum reimbursement amount, whichever is less. The State may require receipts for any meal reimbursement requested by the Contractor under the provisions of the Contract.

The State will pay mileage to and from the work site from the Contractor’s closest dispatch center/service location. The State reserves the right to use Google Maps™ to determine mileage. The State will not pay any mileage, labor costs, or any overtime associated with travel to pick up materials.

Alternative to mileage costs, the State will pay for lodging costs at hotel and motel accommodations that are reasonable and consistent with the lodging facilities available in the area of the project. A lodging cost may not be charged on the same day mileage costs are charged. The decision to apply a mileage cost or lodging cost on a particular day of the project must be made at the time of issuing a quote and agreed upon by the ordering entity. Any mileage or lodging costs exceeding the quote amount agreed upon must be approved in writing by the ordering entity before being charged.

## Definitions for Use when Providing Pricing. All times listed are Central Time.

1. **Regular Time**
* Monday through Friday: [ ] a.m. through [ ] p.m.
1. **Non-Regular Time**
* Monday through Thursday: [ ] p.m. through [ ] a.m.
* [ ] p.m. (Friday) through [ ] a.m. (Monday) and State Designated Holidays.
* The following days are defined as State Designated Holidays:

New Year’s Day Martin Luther King Jr. Day

President’s Day Memorial Day

Independence Day Labor Day

Veteran’s Day Thanksgiving Day

Day after Thanksgiving Christmas Day

Exhibit E

[Placeholder to attach any additional contract exhibits. Use Option 1 when attaching the actual document to the contract. Use Option 2 when incorporating a document through a hyperlink or reference, use this option if the document is too large or you are unable to attach the actual document.]

[Option 1] The following documents are attached and incorporated into the Contract:

[Option 2] The following documents are incorporated by reference into the Contract: