

Contract Number:

P.O. Number:

**[INSTRUCTIONS FOR COMPLETING THIS FORM ARE IN ITALICS AND BRACKETS. PLEASE COMPLETE EVERY FIELD AND DELETE ALL THE INSTRUCTIONS INCLUDING THE BRACKETS.]**

# Professional and Technical Services Contract

THIS CONTRACT, and amendments and supplements thereto, is between the State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of *[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]* (hereinafter “Minnesota State”), and *[INSERT CONTRACTOR’S LEGAL NAME AND FULL ADDRESS. DO NOT ONLY USE A PO BOX.]*, an independent Contractor, not an employee of the State of Minnesota (hereinafter “Contractor”).

WHEREAS, Minnesota State, pursuant to Minnesota Statutes Chapter 136F, is empowered to procure from time to time certain professional or technical services, and

WHEREAS, Minnesota State is in need of professional or technical services, and

WHEREAS, the Contractor represents it is duly qualified and willing to perform the services set forth in this contract and

*[DELETE THE FOLLOWING CLAUSES IF CONTRACTOR IS NOT AN INDIVIDUAL. IF CONTRACTOR IS AN INDIVIDUAL, THEY MUST BE INCLUDED.]*

WHEREAS, the Contractor represents that they are not a current state employee, and

WHEREAS, the Contractor represents that they have not received an early separation incentive under Minnesota State Colleges and Universities Board Policy 4.11, Board Early Separation Incentive Program (BESI), during the one year post-separation period prior to the effective date of this contract.

NOW, THEREFORE, it is agreed:

## TERM OF CONTRACT

This contract is effective on *[INSERT FULL DATE (e.g., January 29, 2022)]* or upon the date the final required signature is obtained by Minnesota State, whichever occurs later, and shall remain in effect until *[INSERT FULL DATE (e.g., June 15, 2022)]* or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. The Contractor understands that no work should begin under this contract until all required signatures have been obtained and the Contractor is notified to begin work by an authorized representative of Minnesota State.

## CONTRACTOR’S DUTIES. The Contractor will:

*[PROVIDE SUFFICIENT DETAIL IN THE DUTIES SO THAT YOU CAN HOLD THE CONTRACTOR ACCOUNTABLE FOR THIS WORK. DO THIS BY EITHER: 1) LISTING THE CONTRACTOR’S DUTIES, DELIVERABLES, AND COMPLETION DATES WITH PRECISE DETAIL HERE OR 2) USING AN EXHIBIT THAT CONTAINS THE PRECISE DUTIES AND DELIVERABLES, NOT THE “PROPOSAL”. YOU MUST INDICATE THAT AN EXHIBIT IS INCORPORATED INTO THE CONTRACT, SUCH AS “Perform the duties specified in Exhibit A, which is attached and incorporated into this contract.”]*

## CONSIDERATION AND TERMS OF PAYMENT

1. **Consideration** for all services performed and goods or materials supplied by the Contractor pursuant to this contract shall be paid by Minnesota State as follows:
	1. **Compensation** of [INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS AND NUMBER OF HOURS, e.g, Fifty and 00/100 Dollars ($50.00) for eighty (80) hours. EXPLAIN HOW THE CONTRACTOR WILL BE PAID BY INSERTING A RATE OF PAY OR BREAKDOWN. EXAMPLES: “IN ACCORDANCE WITH THE BREAKDOWN OF COSTS AS SET FORTH BELOW.” NOTE: CAUTION MUST BE EXERCISED IF PAYMENT BY THE HOUR IS UTILIZED. IF DELIVERABLES CAN BE SUCCINCTLY DEFINED, IT IS GENERALLY PREFERABLE TO STRUCTURE PAYMENT BASED ON THE SUCCESSFUL COMPLETION AND ACCEPTANCE OF SPECIFIC TASKS OR DELIVERABLES.]
	2. **Reimbursement** for travel and subsistence expenses actually and necessarily incurred by the Contractor in performance of this contract in an amount not to exceed *[INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS (e.g., One Hundred Twenty and 00/100 Dollars ($120.00). IF NONE, INSERT “Zero Dollars ($0.00)]* provided that Contractor shall be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current “[**Commissioner’s Plan**](https://www.minnstate.edu/system/templates/docs/CommissionersPlan.pdf)” promulgated by the Commissioner of Employee Relations attached hereto. *[ATTACH IF APPLICABLE; DO NOT ATTACH IF NOT APPLICABLE]* The Contractor shall not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval for such out-of-state travel from an authorized representative of Minnesota State.
	3. The **total obligation** of Minnesota State for all compensation and reimbursement to the Contractor shall not exceed *[INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS, e.g. Four Thousand One Hundred Twenty and 00/100 Dollars ($4,120.00).]*
2. Terms of Payment.
	1. Payment shall be made by Minnesota State promptly after the Contractor’s presentation of invoices for services performed and acceptance of such services by an authorized representative of Minnesota State. All services provided by the Contractor pursuant to this contract shall be performed to the satisfaction of Minnesota State, as determined at the sole discretion of its authorized representative, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The Contractor shall not receive payment for work found by Minnesota State to be unsatisfactory or performed in violation of any applicable federal, state or local law, ordinance, rule or regulation. Invoices shall be presented by Contractor according to the following schedule:

[USE TERMS OR PHRASES SUCH AS WEEKLY, MONTHLY OR WITHIN CALENDAR DAYS FOLLOWING COMPLETION OF SERVICES OR IF THERE ARE SPECIFIC DELIVERABLES, PHASES, TASKS, LIST HOW MUCH WILL BE PAID FOR EACH.]

* 1. *[IF APPLICABLE, INSERT THIS CLAUSE.]* Payments are to be made from federal funds obtained by Minnesota State through Title       of the       Act of       (Public law and amendments thereto). If at any time such funds become unavailable, this contract shall be terminated immediately upon written notice of such fact by Minnesota State to the Contractor. In the event of such termination, Contractor shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
	2. **Nonresident Aliens**. Pursuant to 26 U.S.C. §1441, Minnesota State is required to withhold certain federal income taxes on the gross compensation paid to nonresident aliens, as defined by Internal Revenue Code §7701(b). Minnesota State will withhold all required taxes unless and until the Contractor submits documentation required by the Internal Revenue Service indicating that the Contractor is a resident of a country with tax treaty benefits. Minnesota State makes no representations regarding whether or to what extent tax treaty benefits are available to Contractor. To the extent that Minnesota State does not withhold these taxes for any reason, Contractor agrees to indemnify and hold Minnesota State harmless for any taxes owed and any interest or penalties assessed.
	3. **Entertainers.** Pursuant to Minnesota Statutes 290.9201, Minnesota State is required to withhold a two percent (2%) tax on the gross compensation, including reimbursable expenses, paid to non-Minnesota entertainers for any performance in Minnesota.

## AUTHORIZED REPRESENTATIVES

All official notifications, including but not limited to, cancellation of this contract must be sent to the other party’s authorized representative.

1. Authorized representative of Minnesota State for the purpose of administration of this contract is:

**Name:**

**Address:**

**Telephone:**

**E-Mail:**

Such representative shall have final authority for acceptance of the Contractor’s services and, if such services are accepted as satisfactory, shall so certify on each invoice presented pursuant to Clause 3, paragraph b.

1. The Contractor’s authorized representative for the purpose of administration of this contract is:

**Name:**

**Address:**

**Telephone:**

**E-Mail:**

## CANCELLATION AND TERMINATION

1. This contract may be canceled by Minnesota State at any time, with or without cause, upon **thirty (30) days** written notice to the Contractor. In the event of such a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
2. Termination for Insufficient Funding. Minnesota State may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature or other funding source, or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor within a reasonable time of Minnesota State receiving notice that sufficient funding is not available. Minnesota 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 work or services satisfactorily performed to the extent that funds are available. Minnesota 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.

## ASSIGNMENT

The Contractor shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of Minnesota State.

## LIABILITY

The Contractor shall indemnify, save, and hold Minnesota State, its representatives and employees harmless from any and all claims or causes of action, including all attorney’s fees incurred by Minnesota State, arising from the performance of this contract by the Contractor or Contractor’s agents or employees. This clause shall not be construed to bar any legal remedies the Contractor may have for the failure of Minnesota State to fulfill its obligations pursuant to this contract.

## WORKERS’ COMPENSATION

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

## PUBLICITY

Any publicity given to the program, publications, or services provided resulting from this contract, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor or its employees individually or jointly with others, or any subcontractors shall identify Minnesota State as the sponsoring agency and shall not be released prior to receiving the approval of an authorized representative of Minnesota State.

## MINNESOTA STATUTES §181.59

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

Every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the Contractor agrees: (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason or race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) that a violation of this section is a misdemeanor; and (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

## DATA DISCLOSURE

1. As a condition of this contract, the Contractor is required by Minn. Stat. §270C.65 to provide a social security number, a federal tax identification number or Minnesota tax identification number. This information may be used in the enforcement of federal and state tax laws. These numbers will be available to federal and state tax authorities and state personnel involved in approving the contract and the payment of state obligations. Supplying these numbers could result in action to require the Contractor to file state tax returns and pay delinquent state tax liabilities. **This contract will not be approved unless these numbers are provided.**
2. **Independent Contractors**. Minn. Stat. §256.998 requires Minnesota State to report the name, address and social security number of independent Contractors to the New Hire Reporting Center of the Minnesota Department of Human Services unless this contract is for less than two months in duration with gross earnings of less than $250.00 per month. This information may be used by state or local child support enforcement authorities in the enforcement of state and federal child support laws.

## GOVERNMENT DATA PRACTICES ACT

1. **Data Ownership and Control.** The requirements of Minnesota Statutes § 13.05, subd. 11 apply to this contract. The Contractor and Minnesota State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by Minnesota State in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the Contractor or Minnesota State.
2. **Title to Data.** Minnesota State solely and exclusively owns and retains all right, title, and interest, whether express or implied, in and to its data. For purposes of this section “Minnesota State data” has the meaning of “government data” in Minn. Stat. §13.02, subd. 7. Contractor has no and acquires no right, title, or interest, whether expressed or implied, in and to Minnesota State data.
3. **Public Data Requests.** In the event the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify Minnesota State. Minnesota State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.
4. **Not-Public Data.** The Contractor acknowledges that the Contract may allow it to access private data, including but not limited to “educational data” as defined at Minnesota Statutes § 13.32; “not public data” as defined at Minnesota Statutes § 13.02, subd. 8a; and “nonpublic data” as defined at Minnesota Statutes § 13.02, subd. 9. Contractor is responsible for maintaining the confidentiality, security, and protection of Minnesota State data related to the Contract. The Contractor further acknowledges that for the purposes of this Contract it will be designated as a “school official” with “legitimate educational interests” in Minnesota State data, as those terms have been defined under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, and the Contractor agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. The Contractor will use Minnesota State data only for the purpose of fulfilling its duties under this Contract, and will not monitor or share such data with or disclose it to any third party except as provided for in this Contract, required by law, or authorized in writing by Minnesota State. Contractor will not access Minnesota State user accounts except to respond to service or technical problems or at Minnesota State’s specific request. The Contractor agrees that no Minnesota State data shall be transmitted, exchanged or otherwise provided to other parties except as specifically agreed to in writing by Minnesota State contract administrator or delegate. Contractor must ensure that any contractors, subcontractors, agents and others to whom it provides Minnesota 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.
5. **Security Incidents.** If Contractor becomes aware of a privacy or security incident regarding any Minnesota State data, Contractor will immediately report the event to Minnesota State and Minnesota State’s Chief Information Security Officer. The decision to notify and the actual notifications to Minnesota State’s data subjects affected by the security or privacy incident is the responsibility of Minnesota State. Notwithstanding anything to the contrary in this Contract, the Contractor shall indemnify, hold harmless and defend Minnesota State and its officers, and employees for and against any claims, damages, costs and expenses related to any privacy or security incident involving any Minnesota State data. Contractor shall reasonably mitigate any harmful effects resulting from any privacy or security incident involving any Minnesota State data. For purposes of this sub-section, "security incident" means the successful unauthorized access, use, disclosure, modification or destruction of data or interference with system operations in an information system. For purposes of this sub-section, "privacy incident" means violation of the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13) and/or federal privacy requirements in federal laws, rules and regulations. This includes, but is not limited to, improper or unauthorized use or disclosure of not public data, improper or unauthorized access to or alteration of public data, and incidents in which the confidentiality of the data maintained by Contractor has been breached. For purposes of this section, “not public data” has the meaning in Minnesota Statutes section 13.02, subdivision 8a.
6. **Security Program.** Contractor must make all commercially reasonable efforts to protect and secure Minnesota 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 computing or hosting services (“Policy”). Contractor’s Program and Policy must align with appropriate industry security frameworks and standards such as National Institute of Standards and Technology (“NIST”) 800-53 Special Publication Revision 4, Federal Information Processing Standards (“FIPS”) 199, Federal Risk and Authorization Management Program (“FedRamp”), or Control Objectives for Information and Related Technology (“COBIT”). These measures will be extended by contract to all subcontractors used by Minnesota State. For purposes of this section, “cloud computing” has the meaning defined by the U.S. Department of Commerce, NIST Special Publication 800-145, currently available online at: http://csrc.nist.gov/publications/nistpubs/800-145/SP800-145.pdf. Contractor will make its Policy available to Minnesota State on a confidential, need-to-know basis, along with other related information reasonably requested by Minnesota State regarding Contractor’s security practices and policies. Unless inconsistent with applicable laws, Contractor and Minnesota 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 Minnesota Statutes §13.37.
7. **Secure Coding.** All source code will be scanned for vulnerabilities when changes are made and all medium, high, and critical vulnerabilities remediated and scanned again before being placed in to production. Contractor must follow best practices for application code review and the OWASP top 10. Upon request from Minnesota State, Contractor will provide summary results of most recent scans.
8. **Data Transmission.** Contractor agrees that any and all electronic transmission or exchange of system and application data with Minnesota State and/or any other parties expressly designated Minnesota State shall take place a secure connection protocol (using HTTPS or SFTP or equivalent).
9. **Security Audits and Remediation.** Contractor will audit the security of the systems and processes used to provide the Service, including those of any data centers or third parties used by Contractor to provide the Service. 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”) 27001/27002, 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 (“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; and (5) may be performed for other purposes in addition to satisfying this section. Upon Minnesota State’s reasonable, advance written request, Contractor will provide to Minnesota State a copy of the Audit Report. Contractor will make best efforts to remediate any control deficiencies identified in the Audit Report in a commercially reasonable timeframe. If Minnesota State becomes aware of any other Contractor controls that do not substantially meet Minnesota State’s requirements, Minnesota State may request remediation from Contractor. Contractor will make best efforts to remediate any control deficiencies identified by Minnesota State or known by Contractor, in a commercially reasonable timeframe.
10. **End of Agreement Data Handling.** All Minnesota State data shall be remitted, in a mutually agreeable format and media, to Minnesota State by the Contractor upon request or upon completion, termination or cancellation of this Contract. The foregoing sentence does not apply if Minnesota State’s Chief Information Security Officer or delegate authorizes in writing the Contractor to sanitize and/or destroy the data and the Contractor certifies in writing the sanitization and/or destruction of the data. Ninety days following any remittance of Minnesota State data to Minnesota State, Contractor shall, unless otherwise instructed by Minnesota State in writing, sanitize and/or destroy any remaining data and certify in writing that the sanitization and/or destruction of the data has occurred. Any such remittance, sanitization or destruction will be at the Contractor’s sole cost and expense.

## ACCESSIBILITY

## Contractor represents and warrants that all websites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others, provided under the Contract complies with Web Content Accessibility Guidelines (WCAG) Version 2.1 Level AA and Level A. Contractor will provide written documentation verifying accessibility. Contractor will, at no additional charge, promptly respond to and resolve accessibility complaints received by Minnesota State. As upgrades are made to the products or services available through this Contract, the Contractor agrees to develop functionality which supports accessibility. 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 or service’s accessibility and usability. Upon Minnesota State’s request, Contractor will provide this documentation in advance of the update or upgrade, occurring within an agreed timeframe sufficient for Minnesota State to review the changes and either approve them or request a remediation plan from the Contractor.

## NONVISUAL ACCESS STANDARDS

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

* 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.

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.

## OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

1. Minnesota State shall own all rights, title and interest in all of the materials conceived or created by the Contractor, or its employees or subcontractors, either individually or jointly with others and which arise out of the performance of this contract, created and paid for under this contract, including any inventions, reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form (hereinafter “Materials”).

The Contractor hereby assigns to Minnesota State all rights, title and interest to the Materials. The Contractor shall, upon request of Minnesota State, execute all papers and perform all other acts necessary to assist Minnesota State to obtain and register copyrights, patents or other forms of protection provided by law for the Materials. The Materials created under this contract by the Contractor, its employees or subcontractors, individually or jointly with others, shall be considered “works made for hire” as defined by the United States Copyright Act. All of the Materials, whether in paper, electronic, or other form, shall be remitted to Minnesota State by the Contractor, its employees and any subcontractors, and the Contractor shall not copy, reproduce, allow or cause to have the Materials copied, reproduced or used for any purpose other than performance of the Contractor’s obligations under this contract without the prior written consent of an authorized representative of Minnesota State.

1. The Contractor represents and warrants that Materials produced or used under this contract do not and will not infringe upon any intellectual property rights of another, including, but not limited to, patents, copyrights, trade secrets, trade names, and service marks and names. The Contractor shall indemnify and defend, to the extent permitted by the Attorney General, Minnesota State at the Contractor’s expense from any action or claim brought against Minnesota State to the extent that it is based on a claim that all or part of the Materials infringe upon the intellectual property rights of another. The Contractor shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including, but not limited to, reasonable attorney fees arising out of this contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in the Contractor’s or the opinion of Minnesota State is likely to arise, the Contractor shall, at the discretion of Minnesota State, either procure for Minnesota State the right or license to continue using the Materials at issue or replace or modify the allegedly infringing Materials. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

## ANTITRUST

The Contractor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States or the antitrust laws of the State of Minnesota.

## JURISDICTION AND VENUE

This contract, and amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## AMENDMENTS

Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.

## STATE AUDITS

The books, records, documents, and accounting procedures and practices of the Contractor relevant to this contract shall be subject to examination by Minnesota State and the Legislative Auditor for a minimum of six (6) years from the end of the contract.

## SURVIVAL OF TERMS

The following clauses survive the expiration, cancellation or termination of this contract: Liability; Publicity; Data Disclosure; Government Data Practices Act; Ownership of Materials and Intellectual Property Rights; Jurisdiction and Venue; and State Audits.

## FORCE MAJEURE

No party to this contract shall be responsible for any delays or failure to perform any obligation under this contract due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure the parties’ duty to perform obligations shall be suspended.

## PAYMENT CARD INDUSTRY DATA SECURITY

*[INCLUDE PROVISION IF THE SERVICES INVOLVE STORAGE, PROCESSING OR TRANSMITTAL OF PAYMENT CARD ACCOUNT NUMBERS. DELETE THIS CLAUSE IF INAPPLICABLE.]*

1. The Contractor acknowledges that it is responsible for the security of cardholder data it possesses or otherwise stores, processes, or transmits on behalf of the Minnesota State, or to the extent that it could impact the security of the cardholder data environment of Minnesota State. For purposes of this section, “cardholder data” means any personally-identifiable data associated with a cardholder’s payment, including but not limited to: primary account number, expiration date, card type, name, address, social security number, and card validation code.
2. The Contractor affirms that, as of the date of this agreement, it has complied with the all applicable requirements of the most current, published version of the following:
	1. the requirements of the Payment Card Industry Data Security Standard (“PCI DSS”), as modified from time to time by the PCI Security Standards Council (“PCI SSC”), or similar standards required by payment card associations or the PCI SSC;
	2. the Visa Cardholder Information Security Program that are set forth in the Visa Operating Regulations or that are otherwise issued by Visa U.S.A., Inc.;
	3. the requirements of the MasterCard Site Data Protection Program that are set forth in the MasterCard Security Rules and Procedures or that are otherwise issued by MasterCard; and
	4. any other laws or regulations concerning the protection and security of cardholder data.
3. The Contractor affirms it has performed the necessary steps to validate its PCI DSS compliance.
4. Any service providers that the Contractor uses to perform services for Minnesota State (a “secondary service provider”) must also be PCI DSS compliant. The Contractor agrees to exercise reasonable due diligence that all of its service providers, agents, business partners, contractors, subcontractors or any person or entity that may have access to Minnesota State cardholder data maintain PCI DSS compliance and validation.
5. The Contractor agrees to supply a copy of Contractor’s annual attestation of compliance (AOC) signed by a Qualified Security Assessor (QSA) (i) on or before the date this Agreement is signed by Minnesota State, and (ii) within ten (10) days after each anniversary of the date this Agreement is signed Minnesota State. The Contractor further agrees to provide, upon request, answers to a written information security questionnaire provided by Minnesota State regarding Contractor’s business practices and handling of cardholder data.
6. The Contractor will immediately notify Minnesota State if it or a secondary service provider is no longer PCI DSS compliant and will immediately provide Minnesota State the steps being taken to remediate the non-compliant status. Non-compliant status includes, without limitation, expiration of current Report on Compliance, Self-Assessment Questionnaire and AOC, de-certification of a PCI SSC published solution or service, or report of security incident.
7. The Contractor will immediately notify Minnesota State in the event that security vulnerabilities are identified within its environment or the environment of any secondary service provider that have not or cannot be remediated within five (5) business days.
8. The Contractor acknowledges that it will indemnify Minnesota State for any failure of Contractor or secondary service provider to be and to remain PCI DSS compliant and for any failure of Contractor or secondary service provider to maintain the security of cardholder data that it possesses.
9. If the Contractor uses secondary service provider(s) for system implementation, integration, management, support or other services, Contractor will provide to Minnesota State:
	1. The current status of the secondary service provider’s PCI DSS compliance status, and evidence of its most recent validation of compliance.
	2. Full documentation, including but not limited to data flow, network segmentation, hardware, application diagrams, and narratives for any point-to-point Encryption implementation; and
	3. Full documentation of the original solution providers design specifications or guidelines, including but not limited to, hardware specification, operating system, application, services, database, encryption, or any other component that contributes to the overall solution.
10. If the Contractor breaches in any material respect its obligations under this subsection, in addition to any other right or remedy, Minnesota State may terminate this contract in the event that the breach is not cured within thirty (30) days after receipt of written notice of the breach. Upon such termination, the Contractor will work in good faith with Minnesota State to transition to another service provider.
11. In the event of any suspected, alleged or confirmed loss, disclosure, theft or compromise of cardholder data or card transaction information relating the cardholder data services (a “Compromised Data Event”), the Contractor shall immediately notify (i) Chief Information Officer of Minnesota State by telephone and email and (ii) in the manner required in the PCI DSS requirements and applicable law. Contractor shall fully cooperate with any examinations provided for in the preceding paragraph. Upon the Contractor’s suspected or actual discovery of a Compromised Data Event, the Contractor will not alter or destroy any related records and will maintain complete and accurate documentation regarding any modifications made to the records.
12. The Contractor shall indemnify, defend and hold Minnesota State and its trustees, faculty members, students, employees, agents and Contractors harmless from actions, suits, claims, losses, costs, judgments, fines, penalties (including any fines or penalties imposed on Minnesota State by Payment Card Companies or their acquiring banks), and expenses (including reasonable attorneys’ and investigative fees), arising out of the Contractor 's failure to comply with the representations and warranties in this Agreement.

## INSURANCE [OPTIONAL: YOU MUST INCLUDE INSURANCE IF TRAINING INVOLVES ANY RISK OF PHYSICAL INJURY IF IN DOUBT CONTACT SYSTEM OFFICE RISK MANAGEMENT WITH QUESTIONS. IF NOT REQUIRED BY RISK MANAGEMENT, DELETE ENTIRE INSURANCE SECTION AND RE-NUMBER THE REST OF THE CONTRACT]

1. The Contractor shall submit an *ACORD* Certificate of Insurance to an authorized representative of Minnesota State prior to execution of this contract.
2. The Contractor shall maintain and furnish satisfactory evidence of the following:
	1. **Workers' Compensation Insurance.** The Contractor shall provide workers’ compensation insurance for all its employees and, in case any work is subcontracted. The Contractor shall require the subcontractor to provide workers’ compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer’s Liability, at limits not less than $100,000.00 bodily injury by disease per employee, $500,000.00 bodily injury by disease aggregate, and $100,000.00 bodily injury by accident.
	2. **Commercial General Liability.** The Contractor shall maintain a comprehensive commercial general liability insurance (CGL) policy protecting it from bodily injury claims and property damage claims which may arise from operations under this contract whether the operations are by Contractor or by a subcontractor or by anyone directly or indirectly employed under this contract.

The minimum insurance amounts will be:

* $2,000,000.00 per occurrence;
* $2,000,000.00 annual aggregate applying per project or location;
* $2,000,000.00 annual aggregate applying to Products and or Completed Operations

In addition, the following coverages shall be included:

* Premises and Operations Bodily Injury and Property Damage,
* Personal Injury and Advertising Injury,
* Products and Completed Operations Liability,
* Contractual Liability as provided in Insurance Services Office (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 its equivalent,
* Independent Contractors (let or sublet work),
* Waiver of Subrogation in favor of Minnesota State,
* Coverage will not contain any restrictive endorsement(s) excluding or limiting Broad Form Property Damage (BFPD) or Explosion, Collapse, Underground (XCU).

Name the following as Additional Insureds, to the extent permitted by law:

The Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the College or University, the State of Minnesota, officers and employees of the State of Minnesota, as additional named insured, 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.

* 1. **Commercial Automobile Liability.** The Contractor shall maintain insurance protecting it from bodily injury claims and property damage claims resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations of vehicles under this contract, and in case any work is subcontracted the Contractor will require the subcontractors to maintain Commercial Automobile Liability insurance.

The minimum insurance amounts will be:

* $2,000,000.00 per occurrence Combined Single Limit (CSL) for bodily injury and property damage.

In addition, the following coverage shall be included:

* Owned, Hired, and Non-owned
1. Additional Insurance Conditions:
	1. The Contractor’s policy(ies) shall be primary insurance to any other valid and collectible insurance available to Minnesota State with respect to any claim arising out of Contractor’s performance under this contract:
	2. If the Contractor receives a cancellation notice from an insurance carrier affording coverage herein, the Contractor agrees to notify Minnesota 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 Minnesota State.
	3. The Contractor is responsible for payment of this contract related insurance premiums and deductibles;
	4. The Contractor’s policy(ies) shall include legal defense fees in addition to its liability policy limits;
	5. The insurance policies will be issued by a company or companies having an “A.M. Best Company” financial strength rating of A- (Excellent) or better and authorized to do business in the State of Minnesota prior to execution of this contract.
	6. 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 this contract.
2. Errors and Omissions (EandO) Insurance.

[Generally, Errors and Omissions Insurance is required if the services provided are professional in nature (accounting, architect, etc…) Contact Risk Management if you have questions as to whether E and O Insurance is necessary. If applicable, insert the following, otherwise delete this clause and renumber.]

The Contractor shall maintain insurance protecting it from claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to the Contractor’s services required under this contract. The minimum insurance amounts will be:

* $2,000,000.00 per occurrence
* $2,000,000.00 annual aggregate

The Contractor shall submit a certified financial statement providing evidence the Contractor has adequate assets to cover any applicable E and O policy deductible.

1. Minnesota 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 available for inspection by Minnesota State and copies of policies must be submitted to an authorized representative of Minnesota State upon written request.

## *[DELETE THIS CLAUSE IF THE TOTAL CONTRACT VALUE IS UNDER $100,000.00 AND RENUMBER REMAINING CLAUSE IF APPLICABLE.]* WORKFORCE CERTIFICATION REQUIREMENTS FOR CONTRACTS IN EXCESS OF $100,000.00 AND THE CONTRACTOR HAS MORE THAN 40 FULL-TIME EMPLOYEE IN MINNESOTA OR ITS PRINCIPAL PLACE OF BUSINESS

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

1. Covered Contracts and Contractors. If the contract exceeds One Hundred Thousand and 00/100 Dollars ($100,000.00) and the Contractor employed more than forty (40) full-time employees on a single working day during the previous twelve (12) months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Pts 5000.3400-5000.3600. The business must have a workforce certificate from the Commissioner of Human Rights or certify in writing that it is exempt. The Contractor must obtain a [Workforce Certificate](https://mn.gov/mdhr/certificates/workforce-certificate/) from the Minnesota Department of Human Rights (MDHR) or complete the [Declaration Page](https://mn.gov/mdhr/assets/Workforce%20and%20Equal%20Pay%20Declaration%20Page_tcm1061-519001.pdf) for exemption prior to contract execution
2. Minnesota Statutes Section 363A.36. Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (hereinafter Commissioner) as indicated by a workforce certificate. The law addresses suspension or revocation of a workforce certificate and contract consequences in that event. A contract awarded without a workforce certificate may be voided.
3. Minnesota R. 5000.3400-5000.3600.
	1. **General.** Minnesota R. 5000.3400-5000.3600 implement Minnesota Statutes §363A.36. These rules include, but are not limited to: criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Contractor’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota R. 5000.3400-5000.3600, including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
	2. **Disabled Workers**. The Contractor must comply with the following affirmative action requirements for disabled workers.
		1. The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
		2. The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
		3. In the event of the Contractor’s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes §363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
		4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor’s obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
		5. The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minnesota Statutes §363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
	3. **Consequences.** The consequences for the Contractor’s failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or Minnesota State.
	4. **Certification.** The Contractor hereby certifies it is in compliance with the requirements of Minnesota Statutes §363A.36 and Minnesota R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

## *[DELETE THIS CLAUSE IF THE TOTAL CONTRACT VALUE IS UNDER $500,000.00 AND RENUMBER REMAINING CLAUSE IF APPLICABLE.]* EQUAL PAY CERTIFICATION REQUIREMENTS FOR CONTRACTS IN EXCESS OF $500,000.00 AND THE CONTRACTOR HAS MORE THAN 40 FULL-TIME EMPLOYEES IN MINNESOTA OR ITS PRIMARY PLACE OF BUSINESS

Minnesota State intends to carry out its responsibility for requiring equal pay by its Contractors.

1. **Covered Contracts and Contractors.** If the amount of this contract is in excess of $500,000.00 and the Contractor has 40 or more full-time employees in Minnesota or a state where the business has its primary place of business on a single day during the prior 12 months, the Contractor must comply with the requirements of Minnesota Statutes §363A.44 prior to contract execution. The Contractor must obtain an [Equal Pay Certificate](https://mn.gov/mdhr/certificates/equalpay/) from the Minnesota Department of Human Rights (MDHR) or claim an exemption on the [Declaration Page](https://mn.gov/mdhr/assets/Workforce%20and%20Equal%20Pay%20Declaration%20Page_tcm1061-519001.pdf) prior to contract execution. The Contractor is exempt if it has not employed more than 40 full-time employees on a single working day in one state during the previous 12 months.
	1. **Consequences.** The consequences for the Contractor’s failure to secure and comply with Minnesota Statutes §363A.44 or make a good faith effort to do so, include but are but are not limited to, suspension or revocation of a certificate of Compliance by the Commissioner, and termination of all or part of this contract by the Commissioner or Minnesota State.
	2. **Certification.** The Contractor hereby certifies it is in compliance with the requirements of Minnesota Statutes §363A.44 and applicable rules and regulations and is aware of the consequences for noncompliance.

## CLERICAL ERROR

Notwithstanding Clauses “Assignment, Amendments, and Entire Agreement ” of this contract, Minnesota State reserves the right to unilaterally fix clerical errors, defined as misspellings, minor grammatical or typographical mistakes or omissions, that do not have a substantive impact on the terms of this contract without executing an amendment. Minnesota State must inform the Contractor of clerical errors that have been fixed pursuant to this paragraph within a reasonable period of time

## ENTIRE AGREEMENT

This contract represents the entire agreement between the parties and supersedes any previous discussions or agreements, either verbal or written that occurred between the parties. This contract may not be amended except by written agreement signed by the parties hereto. In the event of any conflict or inconsistency between this contract and any riders, exhibits, addenda, or other document incorporated herein, this contract shall govern.

## OTHER PROVISIONS

*[IF “NONE”, WRITE “NONE”]*

*[IF ADDING OTHER PROVISIONS OR ATTACHMENTS THAT IMPACT OR CONFLICT WITH WHAT IS STATED IN THE CONTRACT, SEEK ASSISTANCE FROM SYSTEM LEGAL COUNSEL.]*

 The rest of this page intentionally left blank. Signature page to follow.

[WHEN FINALIZING DOCUMENT, FORMAT DOCUMENT SO THE ENTIRE SIGNATURE PAGE REMAINS ON THE LAST PAGE]

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

**APPROVED:**

## CONTRACTOR: [Insert Licensee Name]

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

|  |
| --- |
| By (authorized signature and printed name)      |
| Title      |
| Date      |

## VERIFIED AS TO ENCUMBRANCE:

The employee certifies that funds have been encumbered as required by Minnesota Statutes §16A.15.

|  |
| --- |
| By (authorized signature and printed name)      |
| Title      |
| Date      |

## MINNESOTA STATE COLLEGES AND UNIVERSITIES:

***[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]:***

|  |
| --- |
| By (authorized signature and printed name)      |
| Title      |
| Date      |

## AS TO FORM AND EXECUTION:

|  |
| --- |
| By (authorized signature and printed name)      |
| Title      |
| Date      |