

# State of Minnesota – State Court Administration

## REQUEST FOR PROPOSALS

### eCourtMN PROJECT MANAGER

#### I. REQUEST FOR PROPOSAL.

- A. **DEFINED.** The State of Minnesota, State Court Administrator's Office (State) is using a competitive selection process to select a vendor to serve as the Project Manager for a statewide project to move state courts from a framework of paper files to an electronic information environment. The eCourtMN strategic initiative will result in increased productivity for judges and court staff, and ensure convenient, timely, and appropriate access to court information for court users. The engagement for the Project Manager is anticipated to begin on or around August 8, 2012 and end June 30, 2013. This is a request for proposals that could become the basis for negotiations leading to a contract with a vendor to provide services described in this document.
- B. **RIGHT TO CANCEL.** THE STATE IS NOT OBLIGATED TO RESPOND TO ANY PROPOSAL SUBMITTED NOR IS IT LEGALLY BOUND IN ANY MANNER WHATSOEVER BY THE SUBMISSION OF A PROPOSAL. THE STATE RESERVES THE RIGHT TO CANCEL OR WITHDRAW THE REQUEST FOR PROPOSAL AT ANY TIME IF IT IS CONSIDERED TO BE IN ITS BEST INTEREST. IN THE EVENT THE REQUEST FOR PROPOSALS IS CANCELLED OR WITHDRAWN FOR ANY REASON, THE STATE SHALL NOT HAVE ANY LIABILITY TO ANY PROPOSER FOR ANY COSTS OR EXPENSES INCURRED IN CONNECTION WITH THIS REQUEST FOR PROPOSALS OR OTHERWISE. THE STATE ALSO RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS, OR PARTS OF PROPOSALS, TO WAIVE ANY INFORMALITIES THEREIN, AND TO EXTEND PROPOSAL DUE DATES.

#### II. PROJECT BACKGROUND.

- A. **Purpose:** The project is known as eCourtMN and the overall project goals are to increase productivity and reduce operational costs by using and providing electronic court information, provide easy to use electronic court services to constituents, build secure and reliable business and technical infrastructure to support electronic court services, promote and facilitate culture change from paper processes to electronic court processes and to create a fiscally sensible, cost neutral electronic court records process for ongoing operations.

- B. **Benefits:** Litigants will be able to file case documents without going to the courthouse, Judges, court staff, and litigants will be able to view and work with the most up-to-date case documents, even when someone else is viewing the case file and court records not considered confidential under the [Rules of Public Access to Records of the Judicial Branch](#) will be viewable through the Judicial Branch Website.
- C. **Technologies to be implemented:** eFiling (including eCitations and eCharging), eService, ePayments, Electronic document management, including document imaging, desktop tools enabling judges to view case records, electronic transmission of cases to the appellate courts, and eTools (eSignature, eNoticing, eCertification, and other tools that allow for electronic processing of orders).
- D. **Project Approach:** This project requires the Project Manager to work with the State's eCourtMN Portfolio Manager and a team of approximately 12 eCourtMN Portfolio Team Leads to pull together all of the individual eCourtMN Portfolio Team Leads work plans into a single Microsoft Project plan detailing all tasks, dependencies, costs, staff resources and time constraints necessary to implement the eCourtMN initiatives statewide over a three year period. Once the overall project plan has been produced the project manager will be responsible for weekly updates to the plan based upon input from each of the eCourtMN Portfolio Team Leads. Weekly reporting on Critical Path tasks and dependencies to the eCourtMN Portfolio Manager and eCourtMN Portfolio Team Leads will also be expected. These weekly updates and reporting will be expected from this project manager throughout the project lifecycle. Additionally this project manager will be responsible for managing the eCourtMN Portfolio Issues and Risks logs ensuring timely follow-up and follow-through to resolution/mitigation.
- E. **Project Team:** Already in place are an eCourtMN Portfolio Manager and approximately 12 eCourtMN Portfolio Team Leads. Each of these Team Leads has responsibility for one or more project teams working on various aspects of the project, i.e., Communications; Rules, Statutes and Policies; Process Re-engineering; Financial Sustainability; Infrastructure; Implementation Rollout; etc. These eCourtMN Portfolio Team Leads report to the eCourtMN Portfolio Manager with regard to their responsibilities to the overall eCourtMN project. The eCourtMN Portfolio Manager reports to the eCourtMN Steering Committee and the State Court Administrator's Office. This project manager will report to the Analysis Services and Project Management (ASPM) Manager in the Information Technology Division (ITD) of the State Court Administrators Office. The project manager will however work closely with the eCourtMN Portfolio Manager and the eCourtMN Portfolio Team Leads.

- F. **Project Leadership:** An eCourtMN Steering Committee exists comprised of judges and court administrative staff from various locations across the State. The role of this steering committee is to provide advice and guidance to the State Court Administrator in carrying out her responsibility for project implementation including:
- a. Provide guidance for periodic reports to the Judicial Council regarding the project plan (project tasks, timeline, high level state roll out plan and budget).
  - b. Determine statewide decision of order and, once set, decide requests for changes if they would adversely impact the project schedule.
  - c. Decide issues on which a project team can't reach consensus or have significant operational impact, especially controversial business process decisions regarding consistency of approach.
  - d. Make recommendations on significant technology investments where issues regarding choice exist and are brought to the committee by project teams.
  - e. Provide guidance regarding best approaches to, and assist with, constituent engagement especially with judges and external constituents.
  - f. Support Project Management team's efforts to assure districts/appellate courts are implementing on time to avoid cascading effect on other counties/projects.
  - g. Assist in managing risks that have the greatest potential to impact the courts or to delay the project.
  - h. Champion the eCourtMN project.

Additionally there is an eCourtMN Appellate Steering Committee and the ten Judicial Districts across the State each have their own eCourtMN District Steering Committee. These Appellate and District Steering Committees are responsible for guiding the adoption of successful eCourtMN initiatives for judicial and court staff within their court/district and also serve as an escalation focal point. Responsibilities include things such as determining and coordinating rollout schedules for counties within the district in conjunction with eCourtMN Portfolio Management, communicating progress to eCourtMN Portfolio Management and the applicable eCourtMN Project Teams, testing and reviewing communications and change management initiatives, among other things.

### **III. REQUIRED TASKS.**

The Project Manager position will be required to perform the following duties; these duties include, but are not limited to:

- A. Prepare a strategic project plan using Microsoft Project 2010 pulling together all of the existing and new individual eCourtMN Portfolio Team Leads work plans into a single project plan detailing all tasks, dependencies, costs, staff resources and time constraints

necessary to implement the eCourtMN initiatives statewide over a three year period.

The project plan will include:

- a. Required resources to complete project plan
  - b. Time estimates regarding project/task duration
  - c. Identify key milestones and check points within the project
  - d. A clearly illustrated Critical Path.
- B. Work with key State staff to identify and manage the necessary tasks and activities required for this project.
- C. Provide leadership to the eCourtMN Portfolio project team in executing the project plan while managing risks and issues throughout the project lifecycle.
- a. Provide a Risk Analysis report
    - i. Identifying previously reported risks and any mitigation activities already underway or planned
    - ii. Report any new risks identified in the creation of the project plan and pursue mitigation/escalation plans for same.
  - b. Prepare an Issue Synopsis report
    - i. Identifying previously reported issues and any resolution activities already underway or planned.
    - ii. Report any new issues identified in the creation of the project plan and pursue resolution/escalation plans for same.
- D. Use effective change control management to revise the plan as needed.
- E. Provide weekly plan updates based upon input from each of the eCourtMN Portfolio Team Leads.
- F. Provide weekly reporting to the eCourtMN Portfolio Manager and eCourtMN Portfolio Team Leads on Critical Path tasks and dependencies throughout the project lifecycle.
- G. Communicate with eCourtMN Portfolio leadership and Branch leadership regarding project progress as directed by the eCourtMN Portfolio Manager.

The Project Manager will be required to perform all duties onsite, except as specifically approved in advance by the ASPM Manager and the eCourtMN Portfolio Manager.

#### **IV. PROJECT DELIVERABLES.**

- A. A project plan detailing all tasks, dependencies, costs, staff resources, time constraints necessary to implement the eCourtMN initiatives statewide over a three year period. The plan must clearly identify and illustrate the overall project's Critical Path.
- B. Status reports, the frequency of such to be determined by the ASPM Manager and the eCourtMN Portfolio Manager.
- C. Risk Analysis report to identify and draw attention to previously reported risks and any new risks identified in the creation of the project plan.
- D. Issue Synopsis report to capsulize the open issues and their resolution plans, activities and those responsible for same.
- E. Escalation of any critical path project issues, risks or resource needs to eCourtMN Portfolio Management and eCourtMN leadership.
- F. Communication plan detailing how status updates will be communicated, to whom and how often.
- G. Presentations to Judicial Branch leadership groups as requested by the eCourtMN Portfolio Manager.

#### **V. PROJECT MILESTONES AND SCHEDULE.**

- A. Project Start Date: August 1, 2012
- B. Key deliverable dates:
  - a. First draft of overall eCourtMN Project Plan – August 24, 2012. Acceptance and adoption of plan September 7, 2012.
  - b. First Status Report – to be determined.
  - c. Risk Analysis – to be determined.
  - d. Issue Synopsis – to be determined.
  - e. Escalation of critical path risks, issues, resource needs, etc. – to be determined
  - f. Communication Plan – to be determined.
  - g. Presentations to Judicial Branch Leadership – to be determined.

#### **VI. SKILLS AND EXPERIENCE**

##### **A. Required Skills**

- a. Exceptional Project Management skills and project planning experience.

- b. Excellent interpersonal skills and the ability to build and maintain effective working relationships with eCourtMN Portfolio Manager, eCourtMN Portfolio Team Leads and eCourtMN Leadership.
- c. Experience in managing large public sector projects.
- d. *Expert* experience using MS Project in creating and managing a complex project plan and project plan status reporting.
- e. Ability to adapt to changes in course while maintaining productivity.
- f. Strong customer relations skills.
- g. Excellent oral and written communication skills and problem solving ability.

**B. Desired Skills**

- a. Knowledge of Minnesota court system. Previous experience working with courts on similar efforts in scope and complexity is desired.
- b. Tolerance for chaos and ambiguity.

**VII. SUBMISSION REQUIREMENTS.**

**A. GENERAL REQUIREMENTS.**

1. Certificate of Insurance. Each proposal shall contain acceptable evidence of compliance with the workers' compensation coverage requirements of § 176.181, subd. 2. Vendor's RFP response must include one of the following: (1) a certificate of insurance, or (2) a written order from the Commissioner of Insurance exempting you from insuring your liability for compensation and permitting him to self-insure the liability, or (3) an affidavit certifying that you do not have employees and therefore are exempt pursuant to Minn. Stat. §§ 176.011, subd. 10; 176.031; and 176.041.
2. Affirmative Action Certification. If the vendor's proposal exceeds \$100,000.00, the RFP response must include a completed Affirmative Action Statement and Certificate of compliance, which are attached as Appendix I.

NOTE: A successful vendor will also be required to certify that they comply with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39. A successful vendor will also be required to provide assurance that in the event a Federal or State court or Federal or State

administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, a successful vendor as recipient of that finding will forward a copy of the finding to the Office on Violence Against Women.

3. Non-collusion Affirmation. Vendor must complete the Affidavit of Non-collusion (Appendix II) and include it with its RFP response.
4. Contract Terms. The State's proposed contract templates are set forth in Appendix III (contract) and Appendix IV (subcontractor participation agreement). No work can be started until a contract (and where necessary a subcontractor participation agreement), in the forms set forth in the applicable appendices, has been signed by all necessary parties in accordance with State court procurement and contract policies. The templates included in the appendices are sample forms and are not to be interpreted as offers. The successful vendor will also be required to execute a nondisclosure agreement with the MNCIS Odyssey vendor, Tyler Technologies. That form will be provided once a vendor is selected.
5. Financial Stability: Vendor's RFP must provide evidence of Vendor's financial stability as an indicator of Vendor's ability to provide services irrespective of uneven cash flow.
6. Trade Secrets: Judicial Branch rules of public access permit vendors to submit trade secret information according to the following:
  - a. the evidence-of-vendor's-financial-stability must qualify as a trade secret under Minn. Stat. section 325C.01 or as defined in the common law;
  - b. the vendor submits the trade secret information on a separate document (but as part of their complete submission) and marks the document(s) containing only the trade secret information as "confidential;"
  - c. the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.

Except for financial stability information submitted in accordance with this section, do not place any information in your proposal that you do not want revealed to the public. Proposals, once opened, become accessible to the public except for financial stability information submitted in accordance with this section. Please note that if a vendor's proposal leads to a contract, the following information will be accessible to the public: the existence of any resulting contract, the parties to the contract, and the material terms of the contract, including price, projected term and scope of work.

**B. PROJECT RELATED SUBMISSION REQUIREMENTS.**

Responses must include:

1. Overview that reflects the vendors' understanding of the efforts described in this Request for Proposals.
2. Detailed response to staff augmentation
  - Resume(s)
  - Total, not-to-exceed cost, including all travel and related expenses, for Vendor's proposal
  - Area of expertise
  - References: Provide three references for each analyst proposed
  - Conflict of interest Statement as it relates to this project

**VIII. PROPOSAL EVALUATION:**

- A. The State will evaluate all complete proposals received by the deadline. Incomplete proposals, late proposals, or proposals sent to any other address will not be considered. In some instances, an interview or presentation may be part of the evaluation process.
- B. The evaluation of all proposals shall be based upon deriving the "Best Value" for the Judicial Branch. Best Value means achieving an appropriate balance between price and other factors that are key to a particular procurement. A procurement that obtains a low price but does not include other necessary qualities and features of the desired product or service does not meet the Best Value criterion. Factors upon which the proposals will be judged include, but are not limited to, the following:
  1. Previous experience in performing similar work;
  2. Thoroughness, quality, specificity, robustness, flexibility of Vendor's approach/methodology;
  3. Knowledge of existing applications;
  4. Cost estimate;
  5. Financial stability of the organization.
- C. Resumes will be reviewed for fit with the skills needed, and those looking like a good match will be contacted for interviews. No initial limits are placed on the number of candidates who will be selected for interviewing. Candidates will be interviewed and selection decisions made by a team consisting of one or more Managers from State Court Administration. Candidates may be asked to submit work products for review by this team and/or by courts' business analysts.



- D. Responses to this solicitation will be evaluated based on the following criteria:
1. Interview (40%)
  2. Relevant Experience (10%)
  3. Three References (10%)
  4. Desired skills (20%)
  5. Cost (20%)

**IX. SUBMISSION OF PROPOSALS.**

**A. PROPOSAL TIMELINE:**

1. Posting Date: 07/09/2012
2. Questions Due: 07/13/2012 5PM CST
3. Answers Posted: 07/20/2012 5PM CST
4. Proposal Submission Deadline: 07/27/2012 5PM CST, with interviews and subsequent selection as soon thereafter as possible.

- B. QUESTIONS.** Questions must be submitted in writing to the sole point of contact listed below:

Rich Gutsche  
State Court Administration  
Information Technology Division  
25 Rev Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155  
Email: [Rich.Gutsche@courts.State.mn.us](mailto:Rich.Gutsche@courts.State.mn.us)

Other court personnel are not allowed to discuss the Request for Proposal with anyone, including responders, before the proposal submission deadline. Questions and answers will be posted by end of day Friday, July 20, 2012 and will be accessible to other vendors and the public.

- C. SEALED PROPOSAL; NUMBER OF COPIES; SUBMITTAL ADDRESS.** Your proposal must be in writing including both one (1) paper copy and one (1) electronic PDF copy, and must be submitted in a sealed envelope to:

Rich Gutsche  
State Court Administration  
Information Technology Division  
25 Rev. Dr. Martin Luther King, Jr,  
St Paul, MN 55155

- D. **SIGNATURES.** Your proposal must be signed by, in the case of an individual, by that individual, and in the case of an individual employed by a firm, by the individual and an individual authorized to bind the firm.
- E. **INK.** Prices and notations must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and corrections must be initialed in ink by the person signing the proposal.
- F. **DEADLINE; OPENING; PUBLIC ACCESS.** Proposals must be received no later than **5:00 p.m.** local (i.e., St. Paul) time on **Friday, July 27, 2012.** Proposals will be opened the following business day and once opened become accessible to the public (except financial stability information submitted as a trade secret in accordance with the instructions in this RFP. Do not place any information in your proposal that you do not want revealed to the public. All documentation shipped with the proposal, including the proposal, will become the property of the State.
- G. **LATE PROPOSALS.** Late proposals will not be accepted.

APPENDIX I  
**Affirmative Action Statement  
and  
Certification of Compliance**

**STATE OF MINNESOTA - AFFIRMATIVE ACTION STATEMENT**

If your response to the RFP is estimated to exceed \$100,000, you must complete the information requested:

**BOX A:**

1. Have you employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months?

YES       NO

If your answer is “NO,” proceed to BOX B. If your answer is “YES,” **your response will be rejected unless your firm or business has a Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or has submitted an affirmative action plan** to the Commissioner of Human Rights for approval **by the time the responses are due** for any proposal estimated to exceed \$100,000.

2. Please check one of the following Statements:

**YES**, we have a **current** Certificate of Compliance that has been issued by the State of Minnesota, Commissioner of Human Rights. (Include a copy of your certificate with your response.)

**NO**, we **do not have** a Certificate of Compliance; however, **we submitted an affirmative Action plan** to the Commissioner of Human Rights for approval on \_\_\_\_\_, . The plan must be approved by the Commissioner of Human Rights before any designation or agreement can be executed.

**NO**, we **have not submitted** a plan. If your plan is not submitted by the time the responses are due, your response will be rejected.

**NOTE:** Minnesota designations must have a certificate issued by the Minnesota Department of Human Rights. Affirmative Action plans approved by the federal government, a county, or a municipality must still be reviewed and approved by the Minnesota Department of Human Rights for a certificate to be issued.

**BOX B:**

1. Have you employed more than 40 full-time employees on a single working day during the previous 12 months in a State in which you have your primary place of business and that primary place of business is outside of the State of Minnesota, but inside the United States?

YES       NO

If your answer is “NO,” proceed to BOX C. If your answer is “YES,” **the State cannot execute a designation with your firm or business unless it is in compliance with the Minnesota Human Rights certification requirements. It is the sole responsibility of the firm or business to apply for and obtain a human rights certification prior to execution of a designation as applicable.** You may achieve compliance with the Human Rights Act by having either a current Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or by certifying that you are in compliance with federal Affirmative Action requirements.

2. Please check one of the following Statements:

- YES**, we have a current Certificate of Compliance issued by the Minnesota Department of Human Rights. (Include a copy of your certificate with your response.)
- YES**, we are in compliance with federal Affirmative Action requirements.
- NO**, we do not have a current Certificate of Compliance and we cannot certify that we are in compliance with federal Affirmative Action requirements.

**BOX C:**

1. If your answers to BOX A (Question 1) and Box B (Question 1) were “NO,” you are not subject to the Minnesota Human Rights Act certification requirement. Please, however, check one of the following:

- NO**, we have not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months and we have not employed more than 40 full-time employees on a single working day during the previous 12 months in the State in which our primary place of business is located.
- We are a business with our primary place of business outside of the United States that has not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months.

For further information regarding Minnesota Human Rights requirements, contact the Department of Human Rights, Compliance Services, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651.296.5663; Toll Free: 800.657.3704; or TTY: 651.296.1283. For further information regarding federal Affirmative Action requirements, call 800.669.4000 or visit its web site at <http://www.eeoc.gov/>.

**By signing this Statement, the Proposer certifies that the information provided is accurate.**

**NAME OF FIRM:** \_\_\_\_\_

**AUTHORIZED SIGNATURE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## **STATE OF MINNESOTA - AFFIRMATIVE ACTION CERTIFICATION OF COMPLIANCE**

The Minnesota Human Rights Act (Minn. Stat. § 363.073) divides the designation compliance program into two categories. Both categories apply to any designations for goods or services in excess of \$100,000.

The first category applies to businesses that have had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months. The businesses in this category must have submitted an Affirmative Action plan to the Commissioner of the Department of Human Rights prior to the due date of the response and must have received a Certificate of Compliance prior to the execution of a designation.

The second category applies to businesses that have had more than 40 full-time employees on a single working day in the previous 12 months in the State in which they have their primary place of business. The businesses in this category must have either a current Certificate of Compliance previously issued by the Department of Human Rights or certify to the STATE that they are in compliance with federal Affirmative Action requirements before execution of a designation. For further information, contact the Department of Human Rights, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651-296-5663; Toll Free: 800-657-3704; or TTY: 651-296-1283.

Minnesota businesses must have a current Certificate of Compliance or submitted an affirmative action plan by the time proposals are due, or their proposal will be rejected.

The STATE is under no obligation to delay the execution of a designation until a business has completed the Human Rights certification process. It is the sole responsibility of the business to apply for and obtain a Human Rights certificate prior to execution of a designation, as applicable.

**APPENDIX II**

**STATE OF MINNESOTA  
AFFIDAVIT OF NONCOLLUSION**

I swear (or affirm) under the penalty of perjury:

1. That I am the Proposer (if the Proposer is an individual), a partner in the company (if the Proposer is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal submitted in response to the \_\_\_\_\_ Request for Proposals has been arrived at by the Proposer independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Proposer of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent (including a partner) of the Proposer and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the Statements made in this affidavit.

Proposer's Firm Name: \_\_\_\_\_  
Authorized Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPENDIX III**

**STATE OF MINNESOTA**

**CONSULTING CONTRACT**

THIS CONTRACT, and amendments and supplements thereto, is between State of Minnesota, acting through its State Court Administrator's Office, Information Technology Division, address 145 Minnesota Judicial Center, 25 Rev. Martin Luther King Jr., Blvd. ,St. Paul, MN 55155 (hereinafter "STATE") and \_\_\_\_\_ [insert vendor full legal name and address]\_\_\_\_\_ (hereinafter "CONTRACTOR").

**Recitals**

The STATE, pursuant to Minnesota Statutes 2000, Section 480.15, subdivisions 5 and 10b, desires to maintain the computer programs designed to compile the statistical and management data but does not have sufficient resources to complete \_\_\_\_\_ [insert general description of services]\_\_\_\_\_ within desired timeframes. CONTRACTOR (and, where applicable, CONTRACTOR's STATE approved subcontractor) have experience with the desired services and CONTRACTOR represents that it is duly qualified and willing to perform the services set forth herein.

***Contract***

Based on the mutual agreements, promises, and covenants contained in this contract, it is agreed:

- I. **DUTIES.** CONTRACTOR, who is not a STATE employee, shall provide professional \_\_\_\_\_ [insert general description of services]\_\_\_\_\_. Services will be provided based on a \_\_\_\_\_ [insert agreed upon hourly service arrangement]\_\_\_\_\_ hour work week, with meetings and presentations held during core business hours of 9:00 a.m. to 3:30 p.m. Monday through Friday; provided that CONTRACTOR may perform duties outside of core business hours and off site at CONTRACTOR'S expense (including all necessary off site equipment, supplies and related costs). All professional services required hereunder shall be furnished exclusively by CONTRACTOR'S [employee \_\_\_insert employee name\_\_\_]/[CONTRACTOR's subcontractor \_\_\_\_\_insert subcontractor's full legal name\_\_\_\_\_ which must first sign a confidentiality, participation and assignment of rights agreement in a form acceptable to the STATE]. CONTRACTOR'S duties include:

- A. [\_\_insert specific duties here\_\_];
- B. [\_\_insert specific duties here\_\_];
- C. .

II. **CONSIDERATION AND TERMS OF PAYMENT.**

- A. **Consideration.** As consideration for all services performed, transfer of rights, and goods or materials supplied by CONTRACTOR pursuant to this Contract, including all clerical support, phone support, and related expenses, the STATE shall pay to CONTRACTOR one [\_\_insert agreed upon hourly rate here\_\_]dollars (US \$XXX.XX) per hour. The total obligation of the STATE for all compensation and reimbursements to CONTRACTOR shall not exceed [insert total cap amount here] dollars (US \$XXX.XX).

It is understood that no funds are being encumbered under this contract for travel and related expenses, and parking and copying. To the extent that travel or copying is necessary, the STATE will reimburse CONTRACTOR through its regular non-State employee expense reimbursement process, or arrange to pay directly, for pre-approved airfare, lodging, meals, and ground transportation (“travel and subsistence expenses”) or pre-approved copying expenses; provided, that CONTRACTOR shall be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the STATE’S current Administrative Policy on Travel and Reimbursement. CONTRACTOR shall not be reimbursed for travel and subsistence expenses or copying expenses unless it has received prior written approval for such expenses from the STATE, and the STATE will separately encumber the necessary funds. The STATE hereby designates Mark Moore as its agents for approval of such expenses.

- B. **Terms of Payment.** CONTRACTOR shall submit an invoice on the first day of each month for billable costs incurred by the CONTRACTOR during the immediately preceding month. Payments shall be made by the STATE promptly after CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized agent pursuant to Section VII.



III. **TIME REQUIREMENTS.** CONTRACTOR shall comply with all of the time requirements described in this contract.

IV. **CONDITIONS OF PAYMENT.** All services provided by CONTRACTOR pursuant to this contract shall be performed to the satisfaction of the STATE, as determined at the sole discretion of its authorized representative, and in accord with the CONTRACTOR'S duties set forth in section I of this contract and all applicable federal, State, and local laws, ordinances, rules and regulations. CONTRACTOR shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, State or local law, ordinance, rule or regulation.

V. **TERMS OF CONTRACT.** This contract shall not be effective until approved as to form and execution by the STATE's Legal Counsel Division, and upon such approval the effective date shall be deemed to be [insert start date here]. This contract shall remain in effect until [insert termination date here no later than June 30, 2013], unless terminated or cancelled as provided herein.

VI. **CANCELLATION.**

A. The STATE may cancel this contract at any time, with or without cause, upon thirty (30) days' written notice to the other party. If the contract is canceled under this clause, CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.

B. The STATE may immediately cancel 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. Cancellation must be by written or facsimile transmission notice to CONTRACTOR. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the contract is cancelled because of a decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide CONTRACTOR notice of the lack of funding within a reasonable time of the STATE'S receiving that notice. It is understood that funds for this contract are being provided under VAWA STOP Courts OFP 2011 grant program.

- VII. **STATE'S AUTHORIZED REPRESENTATIVE.** The STATE'S Authorized Representative for the purposes of administration of this contract is Mark Moore, Director, State Court Administrator's Office, Information Technology Division. Such representative shall have final authority for acceptance of CONTRACTOR'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Section II (B).
- VIII. **ASSIGNMENT AND BINDING EFFECT.** Except as expressly authorized in this contract, CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which CONTRACTOR may be merged, acquired or consolidated or which may purchase all or substantially all of the business assets of CONTRACTOR.
- IX. **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.
- X. **LIABILITY.** CONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by the STATE, arising from the performance of this contract by CONTRACTOR or CONTRACTOR'S agents or employees. This clause shall not be construed to bar any legal remedies CONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to this contract.
- XI. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor for a minimum period of six years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.
- XII. **CONFIDENTIALITY, DISCLOSURE AND USE.**
- A. **General.** CONTRACTOR shall not disclose to any third party (except, where applicable, CONTRACTOR's STATE approved subcontractor [\_\_\_insert full legal name of subcontractor\_\_\_], which must first sign a confidentiality, participation and

assignment of rights agreement in a form acceptable to the STATE) any information that is both: (1) made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform hereunder or is created, gathered, generated or acquired in accordance with this contract; and (2) inaccessible to the public pursuant to 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. If the CONTRACTOR receives a request to release the information referred to in this Clause, the CONTRACTOR must immediately notify the STATE. The STATE will give the CONTRACTOR instructions concerning the release of the information to the requesting party before the information is released.

**B. State Programs, Databases, Marks.** Without limiting paragraph A, above, CONTRACTOR agrees to the following:

1. **State Programs.** The computer application programs made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as "State Programs." The STATE is the copyright owner of the State Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the State Programs, and all analysis and design specifications, programming specifications, source code, algorithms, and information contained in technical reference manuals pertaining to the State Programs, are trade secret information of the STATE. The computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder, are subject to claims of trade secret and copyright ownership by the respective licensors and will be treated by CONTRACTOR in the same manner as trade secret information of the STATE. In addition, CONTRACTOR will familiarize itself with and abide by the terms and conditions of the license agreements applicable to such third party software. Without limiting the foregoing, CONTRACTOR may also be required to sign an appropriate confidentiality agreement with the STATE's software vendor if access to proprietary segments of the MNCIS application are necessary for CONTRACTOR's work hereunder.

2. **State Databases.** The computer databases made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations

hereunder are referred to herein as "State Databases." The STATE is the copyright owner of the State Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the State Databases and to their structure, sequence and organization are trade secret information of the STATE. All information contained within the State Databases is sensitive, confidential information and will be treated by CONTRACTOR in the same manner as trade secret information of the STATE.

3. **Marks.** The STATE claims that the marks "MNCIS," "Minnesota Court Information System," "CriMNet," "OFP," "Orders For Protection System," and "MARS" are trademarks and service marks of the STATE. CONTRACTOR shall neither have nor claim any right, title, or interest in or use of any trademark, service mark, or trade name owned or used by the STATE.
  
4. **Restrictions on Duplication, Disclosure and Use.** CONTRACTOR will not, except as required in the performance of its obligations hereunder, copy any part of the State Programs or State Databases, prepare any translations thereof or derivative works based thereon, use or disclose any trade secret information of the STATE, or use any trademark, service mark, or trade name of the STATE, in any way or for any purpose not specifically and expressly authorized by this contract. As used herein, "trade secret information of the STATE" means any information or compilation of information possessed by the STATE, or developed by CONTRACTOR in the performance of its obligations hereunder, which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of the STATE" does not, however, include information which was known to CONTRACTOR prior to CONTRACTOR'S receipt thereof, either directly or indirectly, from the STATE, information which is independently developed by CONTRACTOR without reference to or use of information received from the STATE, or information which would not qualify as trade secret information under Minnesota law. It will not be a violation of this section for CONTRACTOR to disclose any information received from the STATE pursuant to the order of a court or governmental authority of competent jurisdiction if CONTRACTOR notifies the State immediately upon receipt by CONTRACTOR of notice of the issuance of such an order.

5. **Proprietary Notices.** CONTRACTOR will advise its employees and permitted subcontractors who are permitted access to any of the State Programs, State Databases, or trade secret information of the STATE of the restrictions upon duplication, disclosure and use contained in this contract. Without limiting the foregoing, CONTRACTOR shall include in and/or on any copy or translation of, or derivative work based upon, any of the State Programs, the State Databases, or trade secret information of the STATE, or any part thereof, and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to CONTRACTOR by the STATE, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

C. **Inspection and Return of State Property.** All documents, encoded media, and other tangible items made available to CONTRACTOR by the STATE, or prepared, generated or created by CONTRACTOR in the performance of its obligations hereunder, are and will be exclusively the property of the STATE and will be available for inspection by the STATE upon request. Upon completion of CONTRACTOR'S performance of services hereunder, CONTRACTOR will, upon the STATE'S request, promptly deliver to the STATE any or all such documents, encoded media and other items in its possession, including all complete or partial copies, recordings, abstracts, notes or reproductions of any kind made from or about such documents, media, items, or information contained therein. CONTRACTOR and the STATE acknowledge that all computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder, or any translations, compilations, or partial copies thereof are and remain the property of the respective licensors.

D. **Injunctive Relief.** CONTRACTOR acknowledges that the STATE will be irreparably harmed if CONTRACTOR'S obligations under sections XII and XIII of this contract are not specifically enforced and that the STATE would not have an adequate remedy at law in the event of an actual or threatened violation by CONTRACTOR of its obligations. Therefore, CONTRACTOR agrees that the STATE shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violation or breach by CONTRACTOR without the necessity of the STATE showing actual damages or that monetary damages would not afford an adequate remedy. CONTRACTOR shall

be liable to the State for reasonable attorney's fees incurred by the STATE in obtaining any relief pursuant to this section.

- E. **Nondisclosure Indemnity.** Without limiting section X, CONTRACTOR agrees to indemnify, defend and save harmless the STATE and its agents, officers and employees from and against any and all claims by Third Parties that are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly and proximately from CONTRACTOR'S violation of the non-disclosure provisions hereof. The STATE shall provide CONTRACTOR with prompt notice of any claim for which indemnification may be sought hereunder and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim. CONTRACTOR shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.

**XIII. RIGHTS IN AND TO INFORMATION, INVENTIONS, AND MATERIALS.** In consideration of the facts that CONTRACTOR'S performance under this contract will involve access to and development of information which shall be trade secret information of the STATE and may involve the development by CONTRACTOR or CONTRACTOR'S participation in the development of copyrightable and/or patentable subject matter which the parties intend be owned by the STATE:

- A. All right, title, and interest in and to any trade secret information of the STATE (as defined in sections XII. B.1, 2, and 4, above) developed by CONTRACTOR either individually or jointly with others, and which arises out of the performance of this contract, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE free and clear of any liens, claims, or other encumbrances.
  
- A. All copyrightable material which CONTRACTOR shall conceive or originate, either individually or jointly with others, and which arises out of the performance of this contract, shall conclusively be deemed "works made for hire" within the meaning and purview of section 101 of the United States Copyright Act, 17 U.S.C. § 101, to the fullest extent possible, and the STATE shall be the copyright owner thereof and of all elements and components thereof in which copyright protection can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire," CONTRACTOR hereby transfers, assigns and conveys the exclusive copyright ownership thereof to the STATE,

free and clear of any liens, claims or other encumbrances.

- B. All right, title, and interest in and to any invention which CONTRACTOR first conceives or first reduces to practice either individually or jointly, and which arises out of the performance of this contract, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE along with ownership of any and all patents on the inventions anywhere in the world, free and clear of any liens, claims or other encumbrances. CONTRACTOR agrees to disclose promptly any such invention to the STATE. This paragraph shall not apply to any invention for which no equipment, supplies, facility or trade secret information of the STATE (as defined in Sections XII. B.1, 2, and 4, above) was used and which was developed entirely on CONTRACTOR own time, and a) which does not relate i) directly to the business of the STATE or ii) to the STATE'S actual or demonstrably anticipated research or development, or b) which does not result from any work performed or materials provided by CONTRACTOR for the STATE.
  
- C. CONTRACTOR will execute all documents and perform all other acts that the STATE may reasonably request in order to assist the STATE in perfecting its rights in and to the trade secret information of the STATE and the copyrightable and patentable subject matter identified herein, in any and all countries.

#### XIV. **AFFIRMATIVE ACTION; EEOC.**

- A. **Covered Contracts and Contractors.** If this contract exceeds \$100,000 and CONTRACTOR employed more than 40 full-time employees on a single working day during the previous twelve months in Minnesota or in the State where it has its principle place of business, then CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another State that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
  
- B. **Minn. Stat. § 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 (“Commissioner”) as indicated by a certificate of compliance. The law addresses

suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

C. Minn. R. Parts 5000.3400-5000.3600 provide:

1. Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 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:
  - a. 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.
  - b. 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.
  - c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the



Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

- d. 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.
  - e. The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- D. **Consequences.** The consequences for a contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the STATE.
- E. **Certification.** CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 (including, where applicable, federal affirmative action requirements) and is aware of the consequences for non-compliance.
- F. **EEOC Compliance Under VAWA STOP Courts OFP 2011 grant program.** Without limiting the foregoing, Contractor will comply with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-

Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39. Contractor assures that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, Contractor as recipient of that finding will forward a copy of the finding to the Office on Violence Against Women.

XV. **WORKERS' COMPENSATION.** In accordance with the provisions of Minnesota Statutes, Section 176.182, as enacted, the CONTRACTOR shall provide acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, subdivision 2, as enacted, prior to commencement of any duties to be performed under this contract.

XVI. **ANTITRUST.** CONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

XVII. **OTHER PROVISIONS.**

A. **Warranties.**

1. **Original Works.** In performing its obligations hereunder, CONTRACTOR will not use or incorporate any trade secret information or copyrighted works of authorship of CONTRACTOR or of any third party, and except for components already in the public domain (without any license restrictions attached thereto), all software, documentation, information and other materials provided or furnished by CONTRACTOR in performing the duties under this contract will be original and will not violate or infringe upon the rights of any third party.

2. **Professional Services; Status; Conflicts of Interest.** CONTRACTOR represents and warrants to the STATE that all professional services required hereunder will be provided exclusively by CONTRACTOR's [employee \_\_\_insert employee name\_\_\_]/[CONTRACTOR's STATE approved subcontractor \_\_\_insert subcontractor's full legal name\_\_\_ (which must first sign a confidentiality,

participation and assignment of rights agreement in a form acceptable to the STATE)] and that : (a) the [employee]/[subcontractor] has the proper training, skill and background so as to be able to perform all professional services required in this contract in a competent and professional manner, and all such work shall be of quality; (b) the [employees]/[subcontractor's employees] assigned to work on the Project have obtained lawful permanent residence in the United States of America with a right to live and work permanently in the United States of America; and (c) CONTRACTOR has taken reasonable steps to determine if [employees]/[subcontractor's employees] (or their immediate family members) have an interest in any pending or threatened litigation or proceedings in any Minnesota State court. If CONTRACTOR becomes aware of any [employee's]/[subcontractor's employee's] interest (or that of their immediate family members) in any threatened or pending litigation or proceeding in any Minnesota State court, CONTRACTOR shall immediately notify the STATE of such interest, and CONTRACTOR acknowledges that the STATE may immediately disqualify such [employee]/[subcontractor employee] from performing services hereunder, and CONTRACTOR shall ensure that no such disqualified [employee]/[subcontractor employee] shall have any further access to the confidential information of the STATE.

3. **Mutual Representations and Warranties.** CONTRACTOR and the STATE each represent and warrant to the other that: a) it has the full right, power and authority to enter into this contract and to perform fully all of its obligations hereunder; b) it is free of any obligation or restriction that would prevent it from entering into this contract or from performing fully any of its obligations hereunder; and c) it has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this contract.

- B. **Patent and Copyright Indemnity.** Without limiting section X, CONTRACTOR shall indemnify the STATE and hold it harmless against any claim that the work performed or material provided hereunder infringes or violates the patent, copyright, or trade secret rights of any third party. CONTRACTOR shall pay any and all resulting costs, expenses (including attorney's fees), damages and/or liabilities associated with or resulting from any such claim.

- C. **Relationship of the Parties.** CONTRACTOR is an independent contractor and shall not be deemed for any purpose to be an employee of the STATE. CONTRACTOR understands and agrees that the STATE is not withholding any taxes from the fees paid to CONTRACTOR pursuant to this contract and that CONTRACTOR is solely responsible for any taxes and other amounts to be paid as a result of the fees paid to CONTRACTOR pursuant to this contract. Neither CONTRACTOR nor the STATE shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.
- D. **Consent to Release of Certain Data.** Under Minn. Stat. § 270C.65 and other applicable law, CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the STATE, to federal and State tax agencies and State personnel involved in the payment of State obligations. These identification numbers may be used in the enforcement of federal and State tax laws which could result in action requiring CONTRACTOR to file State tax returns and pay delinquent State tax liabilities, if any.
- E. **Publicity.** Any publicity regarding the subject matter of this contract must: (1) identify the STATE as the sponsoring agency; (2) must not be released without the prior written approval from the STATE'S Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for CONTRACTOR individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.
- F. **Endorsement.** CONTRACTOR must not claim that the STATE endorses its products or services.
- G. **Non-Exclusivity.** This contract shall not preclude CONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under this contract; provided, however, that such materials prepared by CONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as

precluding or limiting in any way the right of CONTRACTOR to provide computer consulting and programming services or other services of any kind to any person or entity as CONTRACTOR in its sole discretion deems appropriate.

H. **Notices.** Any written notice hereunder shall be deemed to have been received when: (A) personally delivered; (B) sent by confirmed facsimile transmission or telegram; (C) sent by commercial overnight courier with written verification of receipt; or (D) seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at: (1) if to CONTRACTOR, at the CONTRACTOR'S address set forth in the opening paragraph of the contract; (2) if to the STATE, at the STATE'S address set forth in the opening paragraph of the contract, with a copy to Legal Counsel Division, 140 Minnesota Judicial Center, 25 Rev. Martin Luther King Jr., Blvd. St. Paul, MN 55155; or (3) at such other address of which written notice has been given in accordance herewith.

I. **Facilities, Systems and Use Conditions.** Without limiting CONTRACTOR'S responsibilities under any other section of this contract, to the extent that CONTRACTOR utilizes STATE provided on-site or off-site facilities (including, but not limited to, computers, desks, Internet connections, including Internet accessible systems, etc.) to perform CONTRACTOR'S duties under this contract, CONTRACTOR must comply with all policies of the STATE and the Minnesota judicial branch as they relate to the acceptable use or operation of STATE facilities, including, without limitation, the Minnesota State Court System Policy on the Use of the Internet and Other Electronic Communication Tools as the same may be amended and replaced from time to time.

J. **Miscellaneous.**

1. The provisions of sections VII, X, XI, XII, XIII, XVI, and XVII shall survive any cancellation or termination of this contract, as shall any other provisions which by their nature would be intended or expected to survive such cancellation or termination.
2. Captions are for convenient reference and do not constitute a part of this contract.

3. The failure by either Party at any time to enforce any of the provisions of this contract or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this contract. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
4. This contract shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the State of Minnesota, without regard to Minnesota's choice of law provisions. Any action arising out of or relating to this contract, its performance, enforcement or breach will be venued in a State or federal court situated within the State of Minnesota. CONTRACTOR hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.
5. Every provision of this contract shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this contract so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this contract, and all other provisions shall remain in full force and effect.
6. This contract sets forth the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, Statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter; provided that all terms and conditions of all preexisting contracts or agreements between the parties shall continue in full force and effect except as supplemented or modified by this contract. In the event of any inconsistency or conflict between the terms of this contract and any other agreement between the parties, the terms of this contract shall govern.

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

CONTRACTOR:

2. STATE:

<p>CONTRACTOR certifies that the appropriate persons have executed the contract on behalf of CONTRACTOR as required by applicable articles, by-laws, resolutions or ordinances. (If a corporation with more than one individual serving as corporate officer, two corporate officers must execute)</p>
<i>By</i>
<i>Title</i>
<i>Date</i>
<i>By</i>
<i>Title</i>
<i>Date</i>

3. Funds have been encumbered for State by:

<i>By</i>
<i>Title</i>
<i>Date</i>
<i>Contract No.</i>

<p>Person signing certifies that applicable procurement policies have been followed. Where contracts and amendments exceed \$50,000, signature of State court administrator or deputy is also required.</p>
<i>By</i>
<i>Title</i> Information Technology Division Director
<i>Date</i>
<i>By</i>
<i>Title</i> State Court Administrator or Deputy
<i>Date</i>

4. Form and execution approved for STATE by:

<i>By</i>
<i>Title</i>
<i>Date</i>

APPENDIX IV

**CONFIDENTIALITY, PARTICIPATION, AND ASSIGNMENT OF RIGHTS CONTRACT**

THIS CONTRACT, and amendments and supplements thereto, is between State of Minnesota, acting through its State Court Administrator's Office (hereinafter "STATE") and \_\_\_\_\_ [insert subcontractor full legal name and address] \_\_\_\_\_ (hereinafter "SUBCONTRACTOR").

**Recitals**

The STATE has entered in to STATE contract with \_\_\_\_ [enter general contractor full legal name] \_\_\_\_, for \_\_\_\_\_ [insert general description of services] \_\_\_\_\_ services ("the Project"), to be provided by [SUBCONTRACTOR]/[SUBCONTRACTOR's employee \_\_\_\_ insert employee name \_\_\_\_]. SUBCONTRACTOR'S participation in the Project requires, among other things, disclosure to CONTRACTOR of confidential STATE information and authorship by SUBCONTRACTOR of copyrightable subject matter which the STATE and SUBCONTRACTOR intend to be owned by the STATE. The STATE is willing to permit SUBCONTRACTOR to participate in the Project as an independent contractor under contract with \_\_\_\_ [enter general contractor full legal name] \_\_\_\_\_ pursuant to the terms and conditions set forth in this contract.

**Contract**

In consideration of the foregoing, of being permitted to participate in the Project under contract with \_\_\_\_ [enter general contractor full legal name] \_\_\_\_\_, SUBCONTRACTOR agrees as follows:

- I. **SCOPE OF, AND PAYMENT FOR, PARTICIPATION.** \_\_\_\_ [enter general contractor full legal name] \_\_\_\_\_ and SUBCONTRACTOR will determine the scope of SUBCONTRACTOR's engagement and the terms of their relationship with one another, and SUBCONTRACTOR will look solely to \_\_\_\_ [enter general contractor full legal name] \_\_\_\_\_ for payment under its contract with Integration Architects, Inc.
  
- II. **TERM AND TERMINATION.** This contract shall not be effective until approved as to form and execution by the Attorney General's representative, and upon such approval the effective date shall be deemed to be [\_\_\_\_ insert start date here \_\_\_\_]. This contract shall continue in force and effect according to its terms. The STATE may terminate this contract at any time without penalty by giving five (5) working days written notice of termination to SUBCONTRACTOR. Unless otherwise terminated as herein provided, this contract shall terminate as of midnight, [\_\_\_\_ insert termination date here \_\_\_\_ no later than June 30, 2012].



- III. **INDEPENDENT OBLIGATIONS.** The obligations of SUBCONTRACTOR under this contract are unconditional and do not depend upon the performance of any agreements, duties, obligations or terms outside this contract.
- IV. **ASSIGNMENT AND BINDING EFFECT.** Except as expressly authorized in this contract, SUBCONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which SUBCONTRACTOR may be merged, acquired or consolidated or which may purchase all or substantially all of the business assets of SUBCONTRACTOR.
- V. **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.
- VI. **LIABILITY.** SUBCONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by the STATE, arising from the participation in the Project by SUBCONTRACTOR or SUBCONTRACTOR'S agents or employees. If SUBCONTRACTOR is an entity, SUBCONTRACTOR covenants and agrees that it shall obtain and maintain liability insurance with minimum limits of one million dollars (\$1,000,000) per claim, accident or occurrence, whichever is greater, covering injuries or damages caused by the acts or omissions of its employees. This clause shall not be construed to bar any legal remedies SUBCONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to this contract.
- VII. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the SUBCONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor for a minimum period of six years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.
- VIII. **CONFIDENTIALITY; DISCLOSURE AND USE.**
- A. **General.** SUBCONTRACTOR shall not disclose to any third party any information that

is both: (1) made available by the STATE to SUBCONTRACTOR in order to permit SUBCONTRACTOR to participate in the Project or is created, gathered, generated or acquired in accordance with the Project; and (2) inaccessible to the public pursuant to 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. If SUBCONTRACTOR receives a request to release the information referred to in this Clause, SUBCONTRACTOR must immediately notify the STATE. The STATE will give SUBCONTRACTOR instructions concerning the release of the information to the requesting party before the information is released.

**B. State Programs, Databases, Marks.** Without limiting paragraph A, above, SUBCONTRACTOR agrees to the following:

1. **State Programs.** The computer application programs made available by the STATE to SUBCONTRACTOR in order to permit SUBCONTRACTOR to participate in the Project are referred to herein as "State Programs." The STATE is the copyright owner of the State Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the State Programs, and all analysis and design specifications, programming specifications, source code, algorithms, and information contained in technical reference manuals pertaining to the State Programs, are trade secret information of the STATE. The computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to SUBCONTRACTOR in order to permit CONTRACTOR to participate in the Project, are subject to claims of trade secret and copyright ownership by the respective licensors and will be treated by SUBCONTRACTOR in the same manner as trade secret information of the STATE. In addition, SUBCONTRACTOR will familiarize itself with and abide by the terms and conditions of the license agreements applicable to such third party software. Without limiting the foregoing, SUBCONTRACTOR may also be required to sign an appropriate confidentiality agreement with the STATE's software vendor if access to proprietary segments of the MNCIS application are necessary for SUBCONTRACTOR's work hereunder.

2. **State Databases.** The computer databases made available by the STATE to

SUBCONTRACTOR in order to permit SUBCONTRACTOR to participate in the Project are referred to herein as "State Databases." The STATE is the copyright owner of the State Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the State Databases and to their structure, sequence and organization are trade secret information of the STATE. All information contained within the State Databases is sensitive, confidential information and will be treated by SUBCONTRACTOR in the same manner as trade secret information of the STATE.

3. **Marks.** The STATE claims that the marks "Minnesota Court Information System," "MNCIS," "CrimNet," "OFP," "Orders For Protection System," and "MARS" are trademarks and service marks of the STATE or of other agencies of the State of Minnesota. SUBCONTRACTOR shall neither have nor claim any right, title, or interest in or use of any trademark, service mark, or trade name owned or used by the STATE or other agencies of the State of Minnesota.
  
4. **Restrictions on Duplication, Disclosure and Use.** SUBCONTRACTOR will not, except as required for SUBCONTRACTOR'S participation in the Project, copy any part of the State Programs or State Databases, prepare any translations thereof or derivative works based thereon, use or disclose any trade secret information of the STATE, or use any trademark, service mark, or trade name of the STATE, in any way or for any purpose not specifically and expressly authorized by this contract. As used herein, "trade secret information of the STATE" means any information or compilation of information possessed by the STATE, or developed by SUBCONTRACTOR in the performance of its obligations hereunder, which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of the STATE" does not, however, include information which was known to SUBCONTRACTOR prior to SUBCONTRACTOR'S receipt thereof, either directly or indirectly, from the STATE, information which is independently developed by SUBCONTRACTOR without reference to or use of information received from the STATE, or information which would not qualify as trade secret information under Minnesota law. It will not be a violation of this section for SUBCONTRACTOR to disclose any information received from the STATE pursuant to the order of a court or

governmental authority of competent jurisdiction if SUBCONTRACTOR notifies the State immediately upon receipt by SUBCONTRACTOR of notice of the issuance of such an order.

5. **Proprietary Notices.** SUBCONTRACTOR will advise its employees and permitted subcontractors who are permitted access to any of the State Programs, State Databases, or trade secret information of the STATE of the restrictions upon duplication, disclosure and use contained in this contract. Without limiting the foregoing, SUBCONTRACTOR shall include in and/or on any copy or translation of, or derivative work based upon, any of the State Programs, the State Databases, or trade secret information of the STATE, or any part thereof, and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to SUBCONTRACTOR by the STATE, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

C. **Inspection and Return of State Property.** All documents, encoded media, and other tangible items made available to CONTRACTOR by the STATE, or prepared, generated or created by SUBCONTRACTOR in SUBCONTRACTOR'S participation in the Project, are and will be exclusively the property of the STATE and will be available for inspection by the STATE upon request. Upon completion of SUBCONTRACTOR'S participation in the Project, SUBCONTRACTOR will, upon the STATE'S request, promptly deliver to the STATE any or all such documents, encoded media and other items in its possession, including all complete or partial copies, recordings, abstracts, notes or reproductions of any kind made from or about such documents, media, items, or information contained therein. SUBCONTRACTOR and the STATE acknowledge that all computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to SUBCONTRACTOR in order to permit SUBCONTRACTOR to perform its obligations hereunder, or any translations, compilations, or partial copies thereof are and remain the property of the respective licensors.

D. **Injunctive Relief.** SUBCONTRACTOR acknowledges that the STATE will be irreparably harmed if SUBCONTRACTOR'S obligations under sections VIII and IX of this contract are not specifically enforced and that the STATE would not have an adequate remedy at law in the event of an actual or threatened violation by

SUBCONTRACTOR of its obligations. Therefore, SUBCONTRACTOR agrees that the STATE shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violation or breach by SUBCONTRACTOR without the necessity of the STATE showing actual damages or that monetary damages would not afford an adequate remedy. SUBCONTRACTOR shall be liable to the State for reasonable attorney's fees incurred by the STATE in obtaining any relief pursuant to this section.

- E. **Nondisclosure Indemnity.** Without limiting section VI, SUBCONTRACTOR agrees to indemnify, defend and save harmless the STATE and its agents, officers and employees from and against any and all claims by Third Parties that are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly and proximately from SUBCONTRACTOR'S violation of the non-disclosure provisions hereof. The STATE shall provide SUBCONTRACTOR with prompt notice of any claim for which indemnification may be sought hereunder and shall cooperate in all reasonable respects with SUBCONTRACTOR in connection with any such claim. SUBCONTRACTOR shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.

**IX. RIGHTS IN AND TO INFORMATION, INVENTIONS, AND MATERIALS.** In consideration of the facts that SUBCONTRACTOR'S participation in the Project will involve access to and development of information which shall be trade secret information of the STATE and may involve the development by SUBCONTRACTOR or SUBCONTRACTOR'S participation in the development of copyrightable and/or patentable subject matter which the parties intend be owned by the STATE:

- A. All right, title, and interest in and to any trade secret information of the STATE (as defined in sections VIII B. 1., 2., and 4. above) developed by SUBCONTRACTOR either individually or jointly with others, and which arises out of SUBCONTRACTOR'S participation in the Project, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE free and clear of any liens, claims, or other encumbrances.
  
- D. The STATE shall be the copyright owner of all copyrightable material that SUBCONTRACTOR shall conceive or originate, either individually or jointly with

others, and which arises out of the performance of this contract, and of all elements and components thereof in which copyright protection can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire" within the meaning and purview of section 101 of the United States Copyright Act, 17 U.S.C. § 101, SUBCONTRACTOR hereby transfers, assigns and conveys the exclusive copyright ownership thereof to the STATE, free and clear of any liens, claims or other encumbrances.

- E. All right, title, and interest in and to any invention which SUBCONTRACTOR first conceives or first reduces to practice either individually or jointly, and which arises out of SUBCONTRACTOR'S participation in the Project, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE along with ownership of any and all patents on the inventions anywhere in the world, free and clear of any liens, claims or other encumbrances. SUBCONTRACTOR agrees to disclose promptly any such invention to the STATE. This paragraph shall not apply to any invention for which no equipment, supplies, facility or trade secret information of the STATE (as defined in Sections VIII B. 1., 2. and 4., above) was used and which was developed entirely on SUBCONTRACTOR'S own time, and a) which does not relate i) directly to the business of the STATE or ii) to the STATE'S actual or demonstrably anticipated research or development, or b) which does not result from any work performed or materials provided by SUBCONTRACTOR for the STATE.
  
- F. SUBCONTRACTOR will execute all documents and perform all other acts that the STATE may reasonably request in order to assist the STATE in perfecting its rights in and to the trade secret information of the STATE and the copyrightable and patentable subject matter identified herein, in any and all countries.

X. [RESERVED FOR FUTURE USE]

XI. [RESERVED FOR FUTURE USE]

XII. **ANTITRUST.** SUBCONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Project resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

XIII. **OTHER PROVISIONS.**

A. **Warranties.**

1. **Original Works.** In participating in the Project, SUBCONTRACTOR will not use or incorporate any trade secret information or copyrighted works of authorship of SUBCONTRACTOR or of any third party, and except for components already in the public domain (without any license restrictions attached thereto), all software, documentation, information and other materials provided or furnished by SUBCONTRACTOR in performing the duties under this contract will be original and will not violate or infringe upon the rights of any third party.
  
2. **Professional Services; Status; Conflicts of Interest.** SUBCONTRACTOR represents and warrants to the STATE that [SUBCONTRACTOR]/[all services related to the Project will be performed exclusively by SUBCONTRACTOR's employee insert employee name] who is and will be acting as an employee of SUBCONTRACTOR within the meaning and purview of the "works made for hire" provision of the Copyright Laws of the United States of America and who:]:
  - a. has the proper training, skill and background so as to be able to perform all professional integration services required for the Project in a competent and professional manner, and all such work shall be of quality;
  
  - b. has obtained lawful permanent residence in the United States of America with a right to live and work permanently in the United States of America; and
  
  - c. has no interest in any pending or threatened litigation or proceedings in any Minnesota State court and has no immediate family members who have any such interests.

If SUBCONTRACTOR becomes aware of any [SUBCONTRACTOR]/[SUBCONTRACTOR employee] interest (or that of [SUBCONTRACTOR's]/[SUBCONTRACTOR's employee's] immediate family members) in any threatened or pending litigation or proceeding in any Minnesota State court, SUBCONTRACTOR shall immediately notify the

STATE of such interest, and SUBCONTRACTOR acknowledges that the STATE may immediately disqualify [SUBCONTRACTOR]/[SUBCONTRACTOR's employee] from performing services related to the Project, and [SUBCONTRACTOR]/[SUBCONTRACTOR's employee] shall have no further access to the confidential information of the STATE.

3. **Mutual Representations and Warranties.** SUBCONTRACTOR and the STATE each represent and warrant to the other that: a) it has the full right, power and authority to enter into this contract and to perform fully all of its obligations hereunder; b) it is free of any obligation or restriction that would prevent it from entering into this contract or from performing fully any of its obligations hereunder; and c) it has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this contract.
- B. **Patent and Copyright Indemnity.** Without limiting section VI, SUBCONTRACTOR shall indemnify the STATE and hold it harmless against any claim that the work performed or material provided by SUBCONTRACTOR'S participation in the Project infringes or violates the patent, copyright, or trade secret rights of any third party. SUBCONTRACTOR shall pay any and all resulting costs, expenses (including attorney's fees), damages and/or liabilities associated with or resulting from any such claim.
- C. **Relationship of the Parties.** SUBCONTRACTOR is an independent contractor. SUBCONTRACTOR and CONTRACTOR'S employees and agents shall not be deemed for any purpose to be an employee of the STATE. Neither SUBCONTRACTOR nor the STATE shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.
- D. **Publicity.** Any publicity regarding the subject matter of this contract must identify the STATE as the sponsoring agency and must not be released without the prior written approval from the STATE'S Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for SUBCONTRACTOR individually



or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

- E. **Endorsement.** SUBCONTRACTOR must not claim that the STATE endorses its products or services.
  
- F. **Non-Exclusivity.** This contract shall not preclude SUBCONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under SUBCONTRACTOR'S participation in the Project; provided, however, that such materials prepared by SUBCONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as precluding or limiting in any way the right of SUBCONTRACTOR to provide computer consulting and programming services or other services of any kind to any person or entity as SUBCONTRACTOR in its sole discretion deems appropriate.
  
- G. **Notices.** Any written notice hereunder shall be deemed to have been received when: (A) personally delivered; (B) sent by confirmed facsimile transmission or telegram; (C) sent by commercial overnight courier with written verification of receipt; or (D) seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at: (1) the address first set forth herein, if to SUBCONTRACTOR; (2) at 145 Minnesota Judicial Center, St. Paul, MN 55155, if to the STATE, with a copy to Legal Counsel Division, 140 Minnesota Judicial Center, 25 Rev. Martin Luther King Jr., Blvd. St. Paul, MN 55155; or (3) at such other address of which written notice has been given in accordance herewith.
  
- H. **Facilities, Systems, and Use Conditions.** Without limiting SUBCONTRACTOR's responsibilities under any other section of this contract, to the extent that SUBCONTRACTOR utilizes STATE provided on-site or off-site facilities (including, but not limited to, computers, desks, Internet connections including Internet accessible systems, etc.) to perform SUBCONTRACTOR's duties under this contract, SUBCONTRACTOR must comply with all policies of the STATE and the Minnesota

judicial branch as they relate to the acceptable use or operation of STATE facilities, including, without limitation, the Minnesota State Court System Policy on the Use of the Internet and Other Electronic Communication Tools as the same may be amended and replaced from time to time.

**I. Miscellaneous.**

1. The provisions of sections III, IV, VI, VII, VIII, IX, XII, and XIII shall survive any cancellation or termination of this contract, as shall any other provisions which by their nature would be intended or expected to survive such cancellation or termination.
2. Captions are for convenient reference and do not constitute a part of this contract.
3. The failure by either Party at any time to enforce any of the provisions of this contract or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this contract. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
4. This contract shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the State of Minnesota, without regard to Minnesota's choice of law provisions. Any action arising out of or relating to this contract, its performance, enforcement or breach will be venued in a State or federal court situated within the State of Minnesota. SUBCONTRACTOR hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.
5. Every provision of this contract shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this contract so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise

unenforceable, such provision shall be deemed severed from this contract, and all other provisions shall remain in full force and effect.

6. This contract sets forth the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, Statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter; provided that all terms and conditions of all preexisting contracts or agreements between the parties shall continue in full force and effect except as supplemented or modified by this contract. In the event of any inconsistency or conflict between the terms of this contract and any other agreement between the parties, the terms of this contract shall govern.

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

**SUBCONTRACTOR:**

SUBCONTRACTOR certifies that the appropriate persons have executed the contract on behalf of SUBCONTRACTOR as required by applicable articles, by-laws, resolutions or ordinances. (If a corporation having more than one individual serving as corporate officers, two corporate officers must sign.)

By:
Title:
Date:

By:
-----

**STATE:**

By:
Title:
Date:

Approved as to form and execution by the STATE'S Legal Counsel Division:

By:
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Title:
Date:

Title:
Date:

**ACKNOWLEDGMENT**

[enter general contractor full legal name]  hereby acknowledges and approves the foregoing and agrees that the same shall supersede any inconsistent provisions of any agreement between  [enter general contractor full legal name]  and  [insert subcontractor full legal name] .

[enter general contractor full legal name]

By:
Title:
Date: