

State of Minnesota Judicial Branch
State Court Administrator's Office

Request for Proposals

Statewide eSignature Solution
January 7, 2013

I. REQUEST FOR PROPOSALS.

- A. Defined. The State of Minnesota Judicial Branch, State Court Administrator's Office (State) is using a competitive selection process to select a vendor to provide an electronic signature solution (eSignature solution) to be used statewide. The eSignature solution is a tool to be used with the eCourtMN initiative, which will result in increased productivity for judges and court staff, and ensure convenient, timely and appropriate access to court information for court users. The selected eSignature solution will integrate with the State's case management system (MNCIS) and must utilize the State's on premises storage. This is not a bid but a request for proposals (RFP) that may become the basis for negotiations leading to a contract with a vendor.

The State is accepting responses to this RFP only from vendors that responded to the Request for Information dated September 14, 2012.

- 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 proposals 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 In the event the request for proposals is cancelled or withdrawn for any reason, the State shall not have any liability to any proposer for any costs or expenses incurred in connection with this request for proposals or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 OVERVIEW.

- A. Minnesota Judicial Branch. The Minnesota Judicial Branch is comprised of a Supreme Court, a Court of Appeals, and 87 District Courts. The District Courts are located in each of the state's 87 counties and are divided among ten judicial districts for administration purposes. Most cases begin in Minnesota's District Courts. Each year, about 2 million cases are filed in Minnesota's District Courts. The State of Minnesota has 289 District Court judges who hear criminal, civil, family, juvenile and probate cases. More information about the Minnesota Judicial Branch can be found at www.mncourts.gov.
- B. eCourtMN Initiative. The Minnesota Judicial Branch has undertaken a strategic initiative to transition to electronic court records. Known as the eCourtMN initiative, the overall project goals of the eCourtMN initiative are to increase productivity and reduce operation 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 sensible, cost neutral electronic court records process

for ongoing operations. The overall project goal of this RFP is to identify and procure an eSignature solution for the State. The eSignature solution will initially be used in the District Courts in conjunction with the implementation of the eCourtMN initiative.

- C. Project Background. The State is implementing an electronic information environment in which active and new cases are electronically filed, and judges and court staff will primarily utilize electronic records for court services. The State currently uses Tyler Technology's Odyssey Case Management (Odyssey) system in all District Courts throughout the state. The State seeks to augment its statewide electronic business processes with an eSignature solution that will utilize the active directory for authentication. Future plans also require external partner and party authentication.

Odyssey has been in place in all District Court locations throughout Minnesota since early 2008. At this time, the State is focusing on process improvement and efficiency strategies that will enable the State to conduct its business through electronic, rather than paper-based, processes.

This RFP seeks specific vendor product information that describes the eSignature product and demonstrates the vendor's ability to meet the State's eSignature needs.

III. PROJECT OBJECTIVES.

It is the goal of this RFP to identify an eSignature solution that is capable of providing the required eSignature services using the required approach as described herein. A further project objective is to select a vendor whose licensing options and associated costs provide the best value to the State, as further described in Section IV.B.

The State is looking for an eSignature solution that will enable users, including judicial officers and court administration, to electronically sign all types of documents in various locations, including on-site and on-the-go. The signing process should be simple and require no, or very few, additional steps compared to the process for signing paper documents. The preferred eSignature solution should also permit users to share documents to accommodate multiple signatures on single documents without invalidating signature authentication. The preferred solution will also accommodate multiple user personas, and utilize on premises storage.

The State employs approximately 3,500 individuals, many of whom will require the ability to access and use the eSignature solution. This number may fluctuate and future development plans contemplate additional non-employee users accessing the solution. The eSignature solution(s) may be tested in a small number of court locations, and on a smaller scale within State Court Administration, with eventual deployment statewide. Statewide implementation may be based on a staggered rollout plan or a one-time deployment.

IV. PROJECT PROPOSAL ELEMENTS.

The State will provide a project team with suitable recourses to work with the Vendor to successfully implement the selected eSignature solution. Throughout the process, the project team will continue to consult with Subject Matter Experts (SMEs) to ensure that system design meets the business and technical requirements, as well as enhances the State's current systems.

The eSignature solution must meet the requirements in the Business and Operational Case, the Technical Case, and the Project Evaluation Period Case as follows:

- A. Business and Operational Case. The eSignature solution must meet the following project business and operational requirements:
1. Utilize active directory (the State's user directory system) for internal single factor or two-factor authentication. Authentication should remain intact when electronic signature(s) are attached outside of MNCIS and the document is later filed into MNCIS.
 2. Permit external party signing, including two-factor or multi-factor authentication. External parties might include justice system partners and unrepresented parties. Authentication should also remain intact with these signatures when later filed into MNCIS.
 3. Ability to sign documents in various locations; including but not limited to courtroom, chambers, court administration offices, public counter, and away from the office. Must have compatibility with mobile devices; tablets, smartphones, laptops.
 4. The signing process must be simple, and require very few steps for both judicial officers and for court administration staff. The steps required to secure signatures should not become more burdensome for any staff involved than current paper processes.
 5. The following options must be available to all signers:
 - a. Open workflow options permitting flexibility to determine processes based on a variety of needs (e.g., high volume courts vs. low volume courts);
 - b. Document should remain editable before the first signature is attached;
 - c. Document should remain editable after the first signature is attached with the appropriate security settings. For example, the solution should accommodate multiple signatures on a single document with a prioritization of signatures option (e.g., judicial counter-signing of referee orders);

- d. Option to add additional signature(s) to documents after the final judicial signature is added; no editing permitted, attaching signatures only (e.g., court administration adding judgment(s) or certifying documents);
 - e. Edits after the first signature and before final signatures should have metadata attached to identify when the change was made and by whom. All changes and additions to a document should create an audit trail;
 - f. Option for users to sign with different titles (i.e., court administrator, probate registrar);
 - g. Permit the option of batch signing documents or signing one by one. If batch signing, permit the user to remove one or more documents from the list before attaching signature.
6. The solution must accommodate multiple file formats, including PDF, TIFF, and Microsoft Word, and multiple file storage locations, including SharePoint, Outlook, Shared Network Drives, and MNCIS.
 7. Selected vendor must provide implementation services and training materials for initial set-up, and provided in a manner that is repeatable for statewide training needs. Materials may later be enhanced or edited by State staff through curriculum development efforts.
- B. Technical Case. The eSignature solution must meet the following technical and infrastructure requirements:
1. All data and documents must reside in the State's on-premise location(s). Storage in off-premise locations and with non-State owned and controlled systems will not be accepted.
 2. The eSignature solution must be compatible with the following:
 - a. The State's Active Directory.
 - b. Microsoft hyperV environment, server version 2008 R2 or greater.
 - c. Microsoft sequel 2012.
 - d. Microsoft development environment, .NET framework.
 - e. Microsoft SharePoint 2010 or greater.
 - f. Microsoft Word, PDF, and TIF document formats.
 - g. Adobe LiveCycle.
 - h. Mobile devices and biometric login systems.
 3. The State must be able to perform its own development, and code using the vendor's tool set. The product must be self-sufficient in that the State can create its own workflows and processes. A system that requires vendor dependency for future work and development is not ideal.

4. Ongoing product usage maintenance, such as adding new users, removing user rights, and adding new machines, must be controlled by the State.
5. Ongoing annual maintenance and/or support costs should not exceed 20% of the initial negotiated software purchase price.
6. Vendor must provide initial product installation services, and staff training.
7. Vendor must provide initial product documentation, including "help" information.
8. The product must work as a published application within Citrix.
9. The product must create audit trails that remain with the document regardless of storage location, including movement from one location to another.

C. Product Evaluation Period Case. Prior to selection of the eSignature solution, the State may request that a vendor participate in a product evaluation period. The eSignature solution must meet the following product evaluation period requirements:

1. Evaluation Period. The State may choose to evaluate the eSignature solution in two test venues: at limited District Court locations and at State Court Administration. The District Courts may evaluate the products in parallel, or serially, to be determined based upon the responses to this RFP. The two test formats are as follows:
 - a. Controlled Functionality Test: During the Controlled Functionality Test, the eSignature solution is subject to a formal series of test conditions and scripts designed to evaluate the full spectrum of the software functionality to determine how well the business functions are satisfied. The business processes and set up necessary to use the software will also be evaluated. Specific scripts drafted and executed by State court staff, will be based upon the specified business and operational requirements.
 - b. Limited Production Test: This test will evaluate the eSignature solution in a live environment where judges will interact with the product in a variety of representative situations. The objective of the Limited Production Test is for judges to use the eSignature solution in the "real world" to sign court documents in various locations, including in chambers, on the bench, and away from the office. The Limited Production Test will include judges and court administration staff in eCourtMN pilot counties.
2. Vendor Recommendation. In its response to this RFP, the vendor is asked to recommend the best method to complete these two evaluations, and to

specify the requirements necessary, including technical set-up and configuration, and any license fees essential to support the limited production environment. The vendor is encouraged to propose test methods that minimize set-up time, and at a minimum, should specify the following:

- a. Overview of each test;
- b. Proposed method of providing the test environment;
- c. Timeline to prepare the test environment;
- d. Role of the vendor and of the State in preparing and conducting the test;
- e. Requirements that the State must meet in order to conduct the demonstration, e.g., staffing, technical environment, license agreements;
- f. Provide copies of any licensing agreements required for testing to occur; and
- g. Describe the training approach to prepare staff and judges for each demonstration.

3. Limited Production Test Additions. For the limited production test, please also address the following in the RFP response:

- a. How production signatures would remain valid even if the demonstrated product is not selected for ongoing use;
- b. Describe how records will remain secure, confidential and under control of the State; and
- c. Address continuity of the product in the event that the demonstrated product is selected for ongoing use. For example, continue the test for up to 120 days, or until the contract is negotiated, whichever is first.

D. Product Implementation. The vendor must provide information relevant to the implementation of a statewide eSignature solution. The content must include, but is not limited to the following:

1. Implementation Plan. Proposed plan for implementing the eSignature solution for the state. To include, but not be limited to:
 - a. The required tasks to implement the software;
 - b. Resource recommendations and roles for State and Vendor personnel;
 - c. Technical requirements for test, training and production environments, including equipment as appropriate; and
 - d. Training.
2. Cost Proposal. The vendor's cost proposal should include all costs for a statewide eSignature solution, in consideration of the following metrics:
 - a. 1 central information processing site;
 - b. 87 counties;
 - c. Approximately 300 judges; and
 - d. Approximately 3,000 court staff.

The vendor's cost proposal must also provide cost information for the following:

- a. Cost breakdowns for every 500 users added, starting at 1,000 and ending at 3,500;
 - b. Ongoing costs, including annual maintenance and support costs, must not exceed 20% of the initial negotiated purchase of the software;
 - c. eSignature capability for non-court employees (transaction-based as opposed to person-based), e.g., pro se litigants and justice partners; and
 - d. License costs for increased volume of users, if applicable.
3. Time Phased Plan. The State is implementing an eSignature solution concurrent with the implementation of electronic filing. Eleven pilot courts are scheduled to put electronic filing into operation during the first half of calendar year 2013. Additional courts will become operational with electronic filing over the course of the next 2 to 3 years. Additional court locations and administrative offices may also begin to utilize the eSignature solution during this time frame. The vendor should provide any and all applicable information regarding phased software costs that would reflect a scenario where the number of users and volume of use increases over time.

V. QUALITY OF SERVICES.

- A. Vendor will provide a product that meets the requirements set out herein.
- B. Vendor will correct and repair, at no additional charge to the State, any bug brought to its attention by the State according to this section. "Bug" means any deficiency in the product that prevents it from performing according to the specifications set forth in a contract with the Vendor.
- C. Vendor will provide ongoing consultation for the support for the software.
- D. The ultimate decision as to the acceptability or unacceptability of the software product shall be determined solely by the State and shall be the State's protocol for determining acceptability of the product produced by Vendor.

VI. SUBMISSION REQUIREMENTS.

- A. General Requirements.
 1. Certificate of Insurance. Each proposal shall contain acceptable evidence of compliance with the workers' compensation coverage requirements of Minnesota Statute § 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 Minnesota Statutes §§ 176.011, subd. 10; 176.031; and 176.041. *See* Section XV of the sample State contract in Appendix III for details on additional insurance requirements that must be provided on request of the State.

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.
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 boilerplate service contract templates are set forth in Appendix III (contract) and Appendix IV (subcontractor participation agreement). The State also contemplates that a final contract would include acceptance testing and withholding until such acceptance occurs. No work can be started until a contract (and where necessary a subcontractor participation agreement), in the form approved by the State Court Administrator's Legal Counsel Division, 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.
 - a. The Vendor's RFP response must include the Vendor's standard licensing, nondisclosure, maintenance, services and billing/invoicing procedures. By submitting a response to this RFP, Vendor understands and agrees that much of the language included in the State's attached boilerplate service contracts reflects requirements of Minnesota law and may not be modified.
 - b. Vendors requesting additions or exceptions to the State's boilerplate terms and conditions shall submit them with their response to the RFP. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the Vendor's ability to respond to the RFP or perform the contract. The State reserves the right to address requests for exceptions to its boilerplate terms and conditions with the highest scoring Vendor during contract negotiation.
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. Financial Stability-Related Trade Secret. Judicial Branch rules of public access permit vendors to submit evidence of financial stability as trade secret information according to the following:

- a. The evidence-of-vendor's-financial-stability must qualify as a trade secret under Minn. Statute § 325C.01 or as defined in the common law;
- b. The vendor submits the evidence-of-vendor's-financial-stability on a separate document (but as part of their complete submission) and marks the document(s) containing only the evidence-of-vendor's-financial-stability as "confidential;"
- c. The evidence-of-vendor's-financial-stability is not publicly available, already in the possession of the Judicial Branch, or known to or ascertainable by the Judicial Branch from third parties.
- d. 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 also note that if a vendor's proposal leads to a contract, the following information will also 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. Vendor's response must include:

1. An overview that reflects the vendors' understanding of the business, operational, technical and product evaluation period requirements described in this RFP;
2. The information requested in the Product Implementation section of this RFP;
3. A detailed explanation of how the Vendor's product will meet the Project objectives and requirements set forth herein;
4. Information that highlights Vendor's particular expertise and experience to provide the required services, and how Vendor will structure, develop and manage the project. Please highlight any experience you have working with state records or, at a minimum, government data;
5. Total, not-to-exceed cost, including all travel and related expenses, for Vendor's proposal;

6. Three (3) client references, including contact information, that have had the Vendor's product in production for at least 6 months, and that can attest to Vendor's ability to complete work as stated;
7. A statement identifying any conflicts of interest as it relates to this project;
8. All other information required by this RFP.

VII. 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. Vendor's industry expertise and experience in performing similar work;
 2. Thoroughness, quality, specificity, robustness, flexibility of Vendor's approach/ methodology;
 3. Cost estimate;
 4. Financial stability of the organization;
 5. Vendor's controlling security measures and procedures for State records and data Vendor may receive, collect or store;
 6. Vendor's past performance and client references; and
 7. Vendor's current or past relationship with the State.
- C. The State reserves the right to determine, in its sole and absolute discretion, whether any aspect of a proposal satisfactorily meets the criteria established in this RFP.
- D. The State reserves the right to request additional information from Vendors during any phase of the proposal evaluation process. During the evaluation and selection

process, the State may require the presence of Vendor's representatives to make presentations and answer specific questions. Vendors are required to travel at their own expense to make presentations and answer questions. Notification of any such requirements will be given as necessary.

- E. The State may elect not to award a contract solely on the basis of this RFP, and will not pay for the information solicited or obtained. The information obtained will be used in determining the alternative that best meets the needs of the State.
- F. Although this RFP specifies minimum requirements for completion of the Project and should be responded to in all respects, Proposers are invited and encouraged to submit alternatives that may be of interest to the State.

VIII. PROPOSAL SUBMISSION DETAILS

This RFP includes the following Appendixes: Appendix I (Affirmative Action Statement and Certificate of Compliance); Appendix II (Affidavit of Non-Collusion); Appendix III (State of Minnesota Sample Services Contract); Appendix IV (State of Minnesota Sample Confidentiality, Participation and Assignment of Rights Contract); and Appendix V (Sample Confidentiality and Disclosure of Interest Form).

- A. Proposal Timeline.
 - 1. RFP Posted on State Website: January 7, 2013
 - 2. Vendor Questions Due: January 11, 2013, by 4:00 pm CST
 - 3. Answers Posted: January 18, 2013
 - 4. Proposal Submission Deadline: January 25, 2013, by 2:00 pm CST
- B. Amendments. Any amendments to this RFP will be posted on the Judicial Branch website.
- C. Questions. Questions about this RFP or the selection process must be submitted in writing via email and directed to the State's sole point of contact:

Erik Reseland
eCourtMN Coordinator
State Court Administrator's Office
Minnesota Judicial Branch
erik.reseland@courts.state.mn.us

All questions about this RFP must be submitted in writing via email to the State's sole point of contact identified in this paragraph no later than 4:00 p.m. CST (i.e. St. Paul, Minnesota) on Friday, January 11, 2013. Other court personnel are not allowed

to discuss the Request for Proposals with anyone, including responders, before the proposal submission deadline.

- D. Answers to Questions. Timely submitted questions and answers will be posted on the State's website by end of day on January 18, 2013, and will be accessible to the public.
- E. Proposal and Submittal Address. Your proposal must be submitted in writing via email, preferably as an electronic PDF, by 2:00 p.m. CST (i.e. St. Paul, Minnesota) on Friday, January 25, 2013, to:

Erik Reseland
eCourtMN Coordinator
State Court Administrator's Office
Minnesota Judicial Branch
erik.reseland@courts.state.mn.us

No paper submissions or facsimile submissions will be accepted.

- F. 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.
- G. Deadline, Opening, and Public Access. Proposals must be received no later than 2:00 p.m. CST (i.e. St. Paul, Minnesota) on Friday, January 25, 2013. Proposals will be opened at 4:00 p.m. CST and once opened become accessible to the public. With the exception of evidence-of-vendor's-financial-stability trade secret information submitted in accordance with the instructions of Section VI(A)(6) of this RFP, do not place any information in your proposal that you do not want revealed to the public. All documentation submitted with the proposal, including the proposal, will become the property of the State.
- I. Late Proposals. Late proposals will not be accepted.

APPENDIX I

Affirmative Action Statement and Certification of Compliance (Must be submitted with Response)

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: Certificates of Compliance must be 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 NON-COLLUSION
(Must be submitted with Response)**

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 SAMPLE SERVICES CONTRACT ONLY; NOT AN OFFER

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

Recitals

The STATE, pursuant to Supreme Court Order dated May 24, 2012, desires to expand its eCourtMN initiative and case filing system. To facilitate this expansion, the STATE [insert general description of services] . 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 4:00 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___] .

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 and fifteenth day of each month for billable costs incurred by the CONTRACTOR during the immediately preceding one-half 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], 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.

- VII. **STATE'S AUTHORIZED REPRESENTATIVE.** The STATE'S Authorized Representative for the purposes of administration of this contract is Mark Moore, Director, Information Technology Division, or his successor in office. 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. Without limiting the foregoing, CONTRACTOR's liability includes liability for the direct and verifiable costs to recreate any lost or damaged STATE records that are capable of being recreated using commercially reasonable efforts.
- 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; SECURITY; 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. CONTRACTOR shall not use any information that is 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, for any purpose other than performance of this contract.

- B. Security.** Without limiting the preceding paragraph, and with respect to the documents, records, content, system authentication logs, document signing logs and other audit data required to support Minnesota requests regarding e-signatures (“State Data”) it receives, maintains, transmits and/or stores in electronic media or in any other form or medium, CONTRACTOR shall ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls will be employed to ensure security and protection of systems and State Data. The STATE may terminate this contract if the security terms and responsibilities herein are not met. Without limiting any other provision of this contract, CONTRACTOR shall:
1. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of State Data, and the processing and storage devices that contain State Data;
 2. Protect against any reasonably anticipated threats or hazards to the security or integrity of the processing and storage devices that contain State Data;
 3. When decommissioning processing and storage devices that contained or could have contained State Data, CONTRACTOR will securely dispose of all such processing and storage devices and will promptly provide STATE with a Certificate of Destruction upon request;
 4. Promptly report to STATE any security incident (meaning "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system") of which CONTRACTOR becomes aware, including, but not limited to, any known or suspected unauthorized access, use or disclosure of State Data;
 5. Allow STATE to perform at least once annually an evaluation, audit or both of CONTRACTOR'S security and controls and promptly provide upon request by STATE sufficient documentation that demonstrates CONTRACTOR has adequate security measures in place (including, without limitation, current Statement on Standards for Attestation Engagements No. 16 (“SSAE 16”) Type 2 Report for

evidentiary matter or other documentation acceptable to STATE that reasonably verifies CONTRACTOR has acceptable security controls in place;

6. Not export STATE information or State Data outside the boundaries of the United States of America; and
7. At the direction of STATE and at its own expense, comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identification information. At the direction of STATE and at its own expense, in the event of a breach of any of CONTRACTOR'S security obligations or other event requiring notification under applicable law ("Notification Event"), CONTRACTOR agrees to assume responsibility for informing all such individuals in accordance with applicable law.

C. **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. Without limiting any of the foregoing, CONTRACTOR understands and agrees that to the extent that any records made available by the STATE to CONTRACTOR hereunder are publicly-accessible, the STATE retains all rights it possesses in and to such records and CONTRACTOR has no title or ownership rights, including any right to sell, resell, disclose, redisclose, recombine, reconfigure or retain such records except: (i) as expressly required for CONTRACTOR's compliance with this contract; or (ii) to the extent that it has purchased or obtained the same from the State on the same terms and via the same means and to the same extent as other members of the public.

3. **Marks.** The STATE claims that the marks "MNCIS," "CrimNet," "SJIS," 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.

- D. **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.
- E. **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.
- F. **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(C)(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.
- B. 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.
- C. 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(C)(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.
- D. 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.
- E. Without limiting section XII or parts A, B, C, and D of section XIII of this agreement, the STATE retains all rights it possesses in and to the State Databases and State Programs made available to CONTRACTOR for purposes of permitting CONTRACTOR to perform hereunder. CONTRACTOR has no title or ownership rights, including any right to sell, resell, disclose, redisclose, recombine, reconfigure or retain the State Databases or State Programs except as expressly permitted herein to permit CONTRACTOR to complete its duties hereunder. CONTRACTOR may, however, purchase a copy of publicly-accessible versions of information contained in the State Databases and State Programs from the STATE on the same terms and to the same extent as other members of the public. Except to the extent that CONTRACTOR has purchased such copy, CONTRACTOR shall not sell,

resell, disclose, redisclose, recombine, reconfigure or retain the State Databases or State Programs except as otherwise expressly provided herein.

XIV. **AFFIRMATIVE ACTION.**

- 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 and is aware of the consequences for non-compliance.

XV. **INSURANCE.** Throughout the term of this contract CONTRACTOR shall maintain the insurance coverage set forth in this section. The CONTRACTOR's policy shall be the primary insurance to any other valid and collectible insurance available to the STATE with respect to any claim arising out of this contract. CONTRACTOR's insurance company waives its right to assert the immunity of the STATE as a defense to any claims made under said insurance. The CONTRACTOR is responsible for payment of insurance deductibles. Insurance companies must have an "AM Best" rating of A- (minus) and a Financial Size Category of VII or better. Required coverage:

A. 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.

- B. The Comprehensive Automobile Liability: Minimum Limits of Liability of \$1,000,000 Per Occurrence Combined Single Limit Bodily Injury and Property Damage for: Owned Automobile, Non-owned Automobile, and Hired Automobiles.
- C. Commercial General Liability: Blanket Contractual Coverage with Minimum Limits of Liability: \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per occurrence, \$2,000,000 minimum annual aggregate.
- D. Umbrella Liability: Umbrella liability with minimum limits of \$5,000,000 per occurrence and aggregate.
- E. Employer's Liability: Employer's liability insurance coverage with minimum limits of \$1,000,000 each accident.
- F. Crime Insurance: Crime insurance coverage with minimum limits of \$2,000,000 each occurrence.
- G. Lost or Damaged Records: Lost or damaged records insurance coverage for the direct and verifiable costs to recreate any lost or damaged STATE records that are capable of being recreated using commercially reasonable efforts with minimum limits of \$1,000,000 each occurrence.
- H. Confidentiality Breach. Confidentiality breach insurance coverage for the costs of any confidentiality breach hereunder with minimum limits of \$2,000,000 each occurrence.

Upon request of the STATE, CONTRACTOR shall be required to promptly provide a Certificate of Insurance evidencing that the above items are in force and effect during the entire term of the contract. The STATE reserves the right to request inspection of a full certified copy of insurance policies at CONTRACTOR's home office facility. All policies and certificates shall provide that the policies shall remain in force and effect throughout the term of the contract. Policies shall include endorsements that name the STATE, its officers and employees as additional insured with respect to General Liability, Automobile Liability, and/or Umbrella Liability coverages only; however, the STATE is not liable to the insurance company for any premiums, costs or assessments in connection with the CONTRACTOR's policy, as a result of being an additional insured. The CONTRACTOR shall provide the STATE with thirty (30) days' advance written notice of cancellations or non-renewals or reduction in limits or coverage or other material change, including the name of the contract, mailed to the STATE as provided in the notice clause of this Agreement. The CONTRACTOR shall maintain the insurance required above to cover claims which may arise from operations under this contract, whether such operations are by CONTRACTOR or a permitted subcontractor or by anyone directly or indirectly employed under this contract. The CONTRACTOR shall require its insurance company(ies) to waive its(their) right to assert the

immunity of the STATE as a defense to any claims made under said insurance. The failure of the STATE to obtain a certificate of insurance for the insurance policies required under this contract, or the failure of the insurance company(ies) or CONTRACTOR to notify the STATE of the cancelation, non-renewal or change of the insurance policies required under this contract shall not constitute a waiver by the STATE to the CONTRACTOR to provide such insurance policies. The STATE reserves the right to cancel this contract, upon fifteen (15) days written notice, if CONTRACTOR is not in compliance with the insurance requirements of this contract and the STATE retains all rights to pursue any legal remedies against CONTRACTOR in the event of such non-compliance.

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.
 4. **Immediate Notice of Loss, Damage or Disclosure.** CONTRACTOR must notify STATE immediately upon any loss or damage to STATE records, including during any shipping of records provided by CONTRACTOR, and upon any disclosures of STATE records in violation of this Agreement. CONTRACTOR understands that immediate notice is crucial to recovery efforts, including but not limited to freeze drying of water damaged records and taking steps to minimize or prevent further improper disclosures.
- 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 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 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 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 facilities (including, but not limited to, computers, desks, Internet connections, 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 Policies on the Use of the Internet

and Other Electronic Communication Tools and Drug Free Workplace 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.

[Continued on next page with signature blocks.]

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

1. CONTRACTOR:

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)
By: SAMPLE ONLY; NOT INTENDED AS OFFER
Title:
Date:
By: SAMPLE ONLY; NOT INTENDED AS OFFER
Title:
Date:

2. STATE:

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.
By:
Title: Information Technology Division Director
Date:
By:
Title: State Court Administrator or Deputy
Date:

3. Funds have been encumbered for STATE by:

By:
Title:
Date:
Contract No.

4. Form and execution approved for STATE by:

By:
Title: Legal Counsel Division
Date:

APPENDIX IV

STATE OF MINNESOTA CONFIDENTIALITY, PARTICIPATION AND ASSIGNMENT OF RIGHTS CONTRACT

SAMPLE CONTRACT ONLY; NOT AN OFFER

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 data, and authorship by SUBCONTRACTOR of copyrightable subject matter that 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 _____ [enter general contractor full legal name] _____.
- II. **TERM AND TERMINATION.** 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 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 ____].
- 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, and shall not be effective until approved in writing by the STATE's Legal Counsel Division.
- 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 (6) years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.
- VIII. **CONFIDENTIALITY; SECURITY; 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. SUBCONTRACTOR shall not use any information that is 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, for any purpose other than performance of this contract.

- B. Without limiting the preceding paragraph, and with respect to the documents, records, content, system authentication logs, document signing logs and other audit data required to support Minnesota requests regarding e-signatures ("State Data") it receives, maintains, transmits and/or stores in electronic media or in any other form or medium, CONTRACTOR shall ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls will be employed to ensure security and protection of systems and State Data. The STATE may terminate this contract if the security terms and responsibilities herein are not met. Without limiting any other provision of this contract, CONTRACTOR shall:
1. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of State Data, and the processing and storage devices that contain State Data;
 2. Protect against any reasonably anticipated threats or hazards to the security or integrity of the processing and storage devices that contain State Data;
 3. When decommissioning processing and storage devices that contained or could have contained State Data, CONTRACTOR will securely dispose of all such processing and storage devices and will promptly provide STATE with a Certificate of Destruction upon request;
 4. Promptly report to STATE any security incident (meaning "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system") of which CONTRACTOR becomes aware, including, but not limited to, any known or suspected unauthorized access, use or disclosure of State Data;
 5. Allow STATE to perform at least once annually an evaluation, audit or both of CONTRACTOR'S security and controls and promptly provide upon request by STATE sufficient documentation that demonstrates CONTRACTOR has adequate security measures in place (including, without limitation, current Statement on Standards for Attestation Engagements No. 16 ("SSAE 16") Type 2 Report for evidentiary matter or other documentation acceptable to STATE that reasonably verifies CONTRACTOR has acceptable security controls in place);
 6. Not export STATE information or State Data outside the boundaries of the United States of America; and

7. At the direction of STATE and at its own expense, comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identification information. At the direction of STATE and at its own expense, in the event of a breach of any of CONTRACTOR'S security obligations or other event requiring notification under applicable law ("Notification Event"), CONTRACTOR agrees to assume responsibility for informing all such individuals in accordance with applicable law.

C. **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. Without limiting any of the foregoing, SUBCONTRACTOR understands and agrees that to the extent that any records made available by the STATE or CONTRACTOR to SUBCONTRACTOR hereunder are publicly-accessible, the STATE retains all rights it possesses in and to such records and SUBCONTRACTOR has no title or ownership rights, including any right to sell, resell, disclose, redisclose, recombine, reconfigure or retain such records except: (i) as expressly required for SUBCONTRACTOR's compliance with this contract; or (ii) to the extent that it has purchased or obtained the same from the STATE on the same terms and via the same means and to the same extent as other members of the public.

3. **Marks.** The STATE claims that the marks "MNCIS," "CrimNet," "SJIS," 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.
- D. **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.
- E. **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.

- F. **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(C)(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.
- B. 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.
- C. 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(C)(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.

D. 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.

E. Without limiting section VIII or parts A, B, C, and D of section IX of this agreement, the STATE retains all rights it possesses in and to the State Databases and State Programs made available to SUBCONTRACTOR for purposes of permitting SUBCONTRACTOR to perform hereunder. SUBCONTRACTOR has no title or ownership rights, including any right to sell, resell, disclose, redisclose, recombine, reconfigure or retain the State Databases or State Programs except as expressly permitted herein to permit SUBCONTRACTOR to complete its duties hereunder. SUBCONTRACTOR may, however, purchase a copy of publicly-accessible versions of information contained in the State Databases and State Programs from the STATE on the same terms and to the same extent as other members of the public. Except to the extent that SUBCONTRACTOR has purchased such copy, SUBCONTRACTOR shall not sell, resell, disclose, redisclose, recombine, reconfigure or retain the State Databases or State Programs except as otherwise expressly provided herein.

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 or 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 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 facilities (including, but not limited to, computers, desks, Internet connections, 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 Policies on the Use of the Internet and Other Electronic Communication Tools and Drug Free Workplace 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.

[Continued on next page with signature blocks.]

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

1. 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: SAMPLE ONLY, NOT INTENDED AS OFFER
Title:
Date:

By: SAMPLE ONLY, NOT INTENDED AS OFFER
Title:
Date:

2. STATE:

By:
Title:
Date:

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

By:
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: SAMPLE ONLY, NOT INTENDED AS OFFER
Title:
Date:

APPENDIX V

CONFIDENTIALITY AND DISCLOSURE OF INTEREST FORM SAMPLE ONLY; NOT AN OFFER

I. CONFIDENTIALITY.

I, _____, an employee of CONTRACTOR ("CONTRATOR"), acknowledge that CONTRACTOR has been granted certain access to non-public data and records of the State of Minnesota (the "STATE") pursuant to a [CONTRACT] ("Contract") between CONTRACTOR and the STATE. I further acknowledge that such information has tangible value, contains valuable trade secrets, copyrights and confidential information of the STATE and other parties.

To the extent that I come into possession of any non-public data or records (including, without limitation, non-public data or records as defined in 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) or any proprietary or confidential information of the STATE or any third party, I will not use any such information for any purpose other than performance of the Contract and will not disclose any such information to any third party without the STATE's consent, except: (a) as may be required by law, regulation, judicial or administrative process; or (b) as required in litigation pertaining to this Agreement, provided the STATE is given advance notice of such intended disclosure in order to permit the STATE the opportunity to seek a protective order; or (c) to the extent such information (i) becomes publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as a result of a disclosure by CONTRACTOR in breach of its obligations under the Contract or disclosure by me in breach of this Agreement, (ii) becomes available to CONTRACTOR or to me on a non-confidential basis from a source other than the STATE, which is not prohibited from disclosing such information to CONTRACTOR or to me by obligation to the STATE, (iii) is known by CONTRACTOR or to me prior to its receipt from the STATE without any obligation of confidentiality with respect thereto; or (iv) is developed by CONTRACTOR or by me independently of any disclosures made by the STATE to CONTRACTOR or to me of such information.

In addition, I understand and agree that to the extent that any records made available by the STATE to me are publicly-accessible, the STATE retains all rights it possesses in and to such records, and I have no title or ownership rights, including any right to sell, resell, disclose, redisclose, recombine, reconfigure or retain such records except: (i) as expressly required for CONTRACTOR's compliance with the Agreement; or (ii) to the extent that I have purchased or obtained the same from the State on the same terms and via the same means and to the same extent as other members of the public.

In addition, I shall not sell, resell, disclose, redisclose, recombine, reconfigure or retain the Data, Records, Documents, Information, or Information Databases, or Original Documents transmitted to or from the STATE under the Contract except as otherwise expressly provided in the Contract, subject to the exceptions set forth in items (a), (b) and (c) in the preceding paragraph. I agree that my obligations with respect to the confidentiality and security of all information disclosed to me shall survive the termination of any agreement or relationship between the STATE and CONTRACTOR and/or me.

I acknowledge and agree that a breach by me of any of the covenants set forth in this Agreement will cause irreparable injury to the STATE or others for which damages, even if available, will not constitute an adequate remedy. Accordingly, I agree that the STATE, in addition to any other remedy available at law or in equity, shall be entitled to the issuance of injunctive relief (including, without limitation, specific performance) in order to enforce the covenants and agreements contained herein.

If attorneys' fees or other costs are incurred by the STATE to secure performance of any obligations under this Agreement, or to establish damages for the breach thereof or to obtain any other appropriate relief, whether by way of prosecution or defense, and the STATE is the prevailing party, the STATE will be entitled to recover from me reasonable attorneys' fees and costs incurred in connection therewith.

This Agreement shall be interpreted in accordance with the laws of the state of Minnesota. Any action arising out of or relating to this Agreement, its performance, enforcement or breach, will be venued in a state court situated within Ramsey County, Minnesota.

ACKNOWLEDGED AND ACCEPTED:

CONTRACTOR

By: _____
Employee Signature

By: _____

Name (please print)

Name: _____
(please print)

Date: _____

Title: _____

Date: _____

I. DISCLOSURE OF INTEREST.

I, _____ (Print Name), hereby certify that neither I, nor any member of my immediate family, is a party to any pending or threatened lawsuit or proceeding in any Minnesota state court.

Employee Signature

Date: _____

Name (please print)