



**MINNESOTA
JUDICIAL BRANCH**
STATE COURT ADMINISTRATOR'S OFFICE

REQUEST FOR PROPOSALS

**MASTER SERVICE AGREEMENTS FOR
IT TECHNICAL/INFRASTRUCTURE SERVICES &
INFORMATION TECHNOLOGY APPLICATION DEVELOPMENT AND
SUPPORT SERVICES**

I. REQUEST FOR PROPOSALS

- A. **Defined.** The State of Minnesota –State Court Administrator’s Office (SCAO) is using a competitive selection process (referred to herein as the “Request for Proposals” or “RFP”) to select multiple vendors to enter into a Master Service Agreement (MSA) to be considered to provide SCAO Information Technology Division (ITD) technical/infrastructure services and IT application development and support services. The Master Service Agreements have an anticipated start date of approximately July 1, 2015 and an end date of June 30, 2017. The Master Service Agreement will not preclude the State from issuing other RFPs when needed, nor does it preclude a vendor from responding to other State issued RFPs. This is a Request for Proposals that could become the basis for negotiations leading to a contract with a vendor to provide services described in this document.
- B. **Right to Cancel.** The state is not obligated to respond to any proposal submitted, nor is it legally bound in any manner whatsoever by the submission of a proposal. The state reserves the right to cancel or withdraw the request for 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 In the event the request for proposals is cancelled or withdrawn for any reason, the state shall not have any liability to any proposer for any costs or expenses incurred in conjunction with this request for proposals or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 (MJB).** The MJB has 10 judicial districts with 289 district court judgeships, 19 Court of Appeals judges, and seven Supreme Court justices. The MJB is governed by the Judicial Council, which is chaired by Lorie S. Gildea, Chief Justice of the Minnesota Supreme Court. The Minnesota Judicial Branch is mandated by the Minnesota Constitution to resolve disputes promptly and without delay. In 2014, there were more than 1.4 million cases filed in district courts in Minnesota. For more information please visit www.mncourts.gov.
- B. **State Court Administrator’s Office.** The mission of the State Court Administrator’s Office (SCAO) is to provide leadership and direction for the effective operations of the MJB

through support of the Judicial Council, oversight of all SCAO divisions, and coordination of legislative relations, ensuring the provision of sound legal advice, and monitoring branch financial practices through the use of regular internal audits.

The State Court Administrator plans for statewide Judicial Branch needs, develops and promotes statewide administrative practices and procedures, oversees the operation of statewide court programs and strategic initiatives, and serves as a liaison with other branches of government.

- C. **Background. ITD Master Service Agreements.** The State intends to have Master Service Agreements with multiple vendors for IT Technical/Infrastructure Services, and Master Service Agreements with multiple vendors for IT Application Development and Support Services. The specific skills the State is seeking are outlined in Section III, below. Vendors will be selected and approved for specific skills and/or categories of services through this competitive selection process. Selected vendors will be required to sign a Master Service Agreement with the State, which will include the State's standard terms and conditions. Following execution of the Master Service Agreement, selected vendors will become part of the Preferred Vendor resources pool that allows Preferred Vendors to respond to Statements of Work ("SOW"). Only Preferred Vendors, and Preferred Vendors approved for the specific skill or category of service listed on the SOW, may respond to the SOW.

The Master Service Agreements will be valid from July 1, 2015 (or the time of signing the MSA contract if later than July 1, 2015) through June 30, 2017. It must be noted, however, that a Master Service Agreement does not guarantee a vendor work, but does position the vendor to provide future services for the State.

- D. **Statements of Work and Work Order Contracts.** Preferred Vendors may provide services to the State on current and/or future IT projects, and/or provide staffing for current and/or future IT projects.
1. When the State has an IT project requiring services of \$49,999.00 or less, the State may select any Preferred Vendor that holds a Master Service Contract and is approved in the skill and/or type of service identified to perform the services. If a Preferred Vendor is selected, the Preferred Vendor will be entered into a Work Order Contract ("WOC") with the State based on their per hour charge rate submitted in response to this Request for Proposals.
 2. When the State has an IT project requiring services exceeding \$50,000.00, the State will post a SOW on its website (www.mncourts.gov). The SOW will specify a period of between three (3) to ten (10) days for Preferred Vendors to submit a proposal. The SOW will typically describe the overall business need, deliverables, milestones/schedule, required skill(s) and schedule for the IT project. Only Preferred Vendors that hold a Master Service Contract and are approved in the skill and/or type of service identified in the SOW may respond. Court staff will evaluate

proposals submitted in response to the SOW from Preferred Vendors based on criteria that may include, for example:

- Availability of staff to fill request(s);
- Individual skills and experience;
- Fit with State culture;
- Hourly rate;
- Knowledge of State's technical and/or business environment;
- Review sample of work, if applicable;
- Reference check;
- Result of candidate interview;
- Past State contract performance
- And other applicable criteria.

Preferred Vendors are responsible for accessing the State's website to review SOWs, and for responding only to SOWs posted for those skills and categories of services for which they have been approved. Specific instructions, SOW response requirements and evaluation/selection criteria for responses will be included in the individual SOWs.

If a Preferred Vendor's proposal is selected, the Preferred Vendor will enter into a WOC with the State based on their per hour charge rate submitted in response to this Request for Proposals. The State reserves the right to choose all, some or none of the candidates proposed by a Preferred Vendor in response to a SOW.

- E. **Project Benefits.** By selecting Master Service Contract Preferred Vendors and having them available to provide services for State IT projects, this will ensure the overall timely implementation of State initiatives. The availability of Master Service Contracts will also simplify and expedite procurement processes for IT services.
- F. **Project Approach.** The vendors will work with State IT staff, who will oversee execution of the IT projects and sign off on the deliverables, including, but not limited to code, training material, documentation, etc. Project deliverables and required tasks will be defined within the individual projects and detailed in the WOC between the Preferred Vendor and the State.

III. PROJECT DESCRIPTION AND OBJECTIVES.

A. Technical/Infrastructure:

- Window Server Administration
- Database Administration (Microsoft SQL)
- Network (LAN/WAN) Administration
- Citrix Support
- Firewall Configuration and Support
- Exchange Server Support
- Workstation Configuration and Support

- End User Support
- Service Desk Support
- Security Analysis and Support
- Storage Area Network Support (EMC) and Implementation
- Network/Server/Hypervisor Architecture and Design
- High Availability/Disaster Recovery Architecture and Design

B. Application Development and Support:

- Project Management
- Business Analysis
- Technical Analysis
- Business Intelligence (Microsoft SQL)
- Technical Writing
- SharePoint Application Development
- SharePoint Administration and User Support
- Web Application Development
- .Net Development/C#
- SSRS Support and Development
- Quality Assurance
- Application Architecture and Design
- User Interface/User Experience
- Active Directory Federation Services

IV. SUBMISSION REQUIREMENTS.

A. **General Requirements** – each response must include the following or it may be excluded from moving through to the next phase of response scoring:

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 of the sample State contract in Appendix III for details on additional insurance requirements that must be provided upon 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 – acknowledgment of a and b.** The State’s proposed contract templates are set forth in Appendix III (contract) and Appendix IV (subcontractor participation agreement). No work can be started until a contract (and where necessary a subcontractor participation agreement), in the 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. By submitting a response to this RFP, Vendor accepts the standard terms and conditions and contract set out in Appendices III and IV, respectively. Much of the language included in the standard terms and conditions and contract reflects requirements of Minnesota law.
 - b. Vendors requesting additions or exceptions to the standard terms and conditions or contract terms 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 nonmaterial requests for exceptions to the standard terms and conditions and contract language with the highest scoring Vendor during contract negotiation.
 - c. The State shall identify any revisions to the standard terms and conditions and contract language in a written addendum issued for this RFP. The addendum will apply to all Vendors submitting a response to this RFP. The State will determine any changes to the standard terms and conditions and/or contract.
5. **Evidence of 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. **Financial Stability-Related Trade Secret.** Judicial MJB 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 MJB, or known to or ascertainable by the Judicial MJB from third parties.

Except for financial stability information submitted in accordance with this section, do not place any information in your proposal that you do not want revealed to the public. Proposals, once opened, become accessible to the public except for financial stability information submitted in accordance with this section. Please 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; each response must include the following or it may be excluded from moving through to the next phase of response scoring:

1. A cover sheet including vendors' contact information, email address, business address, and phone numbers. Cover sheet should include signature lines and 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
2. Information that highlights the vendor's particular expertise and experience to provide the required services;
3. A comprehensive company profile detailing the vendor's IT experience; including a brief description of IT project engagements that the vendor and its clients believe to have had successful outcomes (acknowledging that these clients may be called upon as references). Describe the outcomes qualitatively and quantitatively;
4. A summary of the vendor's core/major competencies in one or both of the following areas:
 - a. Technical/Infrastructure Services, if the vendor is submitting a proposal for service in the Technical/Infrastructure Services; and/or
 - b. Application and Support Services, if the vendor is submitting a proposal for service in the Application Development and Support Services category;
5. A completed Appendix A, with the vendor's minimum and maximum per hour charge rate for the skills vendor is proposing to provide in response to this RFP;
6. At least three (3) client references with appropriate contact information that the vendor has performed work for in the past three (3) years and that can attest to vendor ability to complete work as stated;

7. A written statement acknowledging either no conflict of interest or identifying any conflicts of interest as it relates to this project;
8. Information pertaining to any previous engagement vendor has had with the State including: contract date, and State contact.

C. 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 demonstration may be part of the evaluation process.
- B. Proposals will be evaluated strictly by the general submission requirements and project specific requirements as outlined in Section IV, A & B.
- C. The State reserves the right to determine, at 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 at a vendor conference. During a vendor conference, a vendor may be asked to provide a demonstration of the product and/or to answer specific questions. Vendors are required to travel at their own expense to for the demonstration of the product and answer questions. Notification of any such requirements will be given as necessary.
- E. The State may elect not to award a contract to any Vendor based on their response to 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.

V. SUBMISSION OF PROPOSALS.

A. Proposal Timeline.

1. Posting Date on State MJB Website [MJB Court Public Website - Public Notice](#) : Friday, March 20, 2015
2. Questions Due: Wednesday March 25, 2015
3. Answers Posted: Wednesday April 1, 2015
4. Proposal Submission Deadline: 4:00 pm Wednesday April 8, 2015

5. Subsequent approval and MSA contracts established as soon thereafter as possible.
- B. **Amendments.** Any amendments to this RFP will be posted on the MJB website.
- C. **Questions.** 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 March 25, 2015. Other court personnel are not allowed to discuss the Request for Proposals with anyone, including responders, before the proposal submission deadline.

Jen.VanDemmeltraadt@courts.state.mn.us

Infrastructure and Development Program Manager

- D. **Answers to Questions.** Timely submitted questions and answers will be posted on the Judicial MJB website by the end of the day on Wednesday April 1, 2015 and will be accessible to the public and other proposers.
- E. **Sealed Proposal and Submittal Address.** Your proposal must be submitted in writing by 4:00 pm Wednesday April 8, 2015 in a sealed envelope to:

Jen VanDemmeltraadt
Infrastructure and Development Program Manager
State Court Administrator's Office
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155
Jen.VanDemmeltraadt@courts.state.mn.us

The submission must include both one (1) paper copy and one (1) electronic PDF copy either on disc or flash drive. No facsimile or email submissions will be accepted. Proposals delivered in person to State Court Administration should be presented to the First Floor receptionist and date/time stamped by the receptionist.

- 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. This can be done on vendor informational cover sheet as stated in Project Related Submission Requirements.
- G. **Ink.** Prices and notations must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and corrections must be initialed in ink by the person signing the proposal.
- H. **Deadline; Opening; Public Access.** Proposals must be received no later than 4:00 pm Wednesday April 8, 2015. Proposals once opened become accessible to the public (except financial stability information submitted as a trade secret in accordance with the instructions in Section IV(A)(5)(a,b,c) of this RFP). With the exception of evidence-of-vendor's-financial-stability trade secret information submitted in accordance with the

instructions in Section IV(A)(5) of this RFP, do not place any information in your proposal that you do not want revealed to the public. All documentation shipped with the proposal, including the proposal, will become the property of the State.

- I. **Late Proposals.** Late proposals will not be accepted or considered.
- J. **Selection Timeline.** Vendor selection for participation on the MSA, along with the MSA contracts will be completed as soon as possible after the proposal submission deadline. All MSA contracts will be valid from July 1, 2015 through June 30, 2017.

APPENDIX A

Vendor’s minimum and maximum per hour charges

Technical/Infrastructure Skill	Minimum Rate	Maximum Rate
Windows Server Administration		
Database Administration (Microsoft SQL)		
Network (LAN/WAN) Administration		
Citrix Support		
Firewall Configuration and Support		
Exchange Server Support		
Workstation Configuration and Support		
End User Support		
Service Desk Support		
Security Analysis and Support		
Storage Area Network Support and Implementation (EMC)		
Network/Server/Hypervisor Architecture and Design		
High Availability/Disaster Recovery Architecture and Design		
Application Development & Support Skill	Minimum Rate	Maximum Rate
Project Management		
Business Analysis		
Technical Analysis		
Business Intelligence (Microsoft SQL)		
Technical Writing		
SharePoint Application Development		
SharePoint Administration and User Support		
Web Application Development		
.Net Development/C# Development		
SSRS Support and Development		
Quality Assurance		
Application Architecture and Design		
User Interface/User Experience		
Active Directory Federation Services		

APPENDIX B

MJB Summary of Submission Requirements

Each response MUST include all items listed in both the General Requirements and Project-Related Submission Requirements. If a response is missing any of these requirements, it will fail phase 1 review and will not be further considered. You will be notified by rejection letter if your response is missing any of these items.

Please see the Section IV. Submission Requirements A. and B. for the details of each item listed below:

A. General Requirements

1. Certificate of Insurance.
2. Affirmative Action Certification.
3. Non-Collusion Affirmation.
4. Contract Terms – acknowledgment.
5. Evidence of Financial Stability.

B. Project-Related Submission Requirements

1. Cover sheet.
2. Information highlighting Vendor expertise and experience.
3. Comprehensive company profile detailing Vendor's IT experience.
4. Summary of Vendor core/major competencies in both Technical/Infrastructure and Application Support Services.
5. Completed Appendix A.
6. Three (3) client references.
7. Written statement acknowledging whether or not there is a conflict of interest.
8. All previous engagements Vendor has had with the State including: contract date and state contact

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

BOX B:

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

YES NO

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

BOX B (continued):

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
CONSULTING CONTRACT
SAMPLE ONLY; NOT AN OFFER

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

Recitals

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

Contract

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

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

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.

- C. **Acceptance.** Upon written notice from CONTRACTOR that the Deliverables are ready for STATE review, the STATE shall have ten (10) business days to review the Deliverables. If the STATE does not notify CONTRACTOR within such ten (10)-business day period that the Deliverables are not acceptable, the Deliverables shall be deemed accepted. If the STATE notifies CONTRACTOR within the ten (10)-business day period that the Deliverables are not accepted, CONTRACTOR shall have ten (10) business days to make corrections and resubmit the Deliverables to the STATE for review by written notice, and the STATE shall again have ten (10) business days to review the

Deliverables, and this process shall repeat corresponding ten (10)-business day periods until acceptance has occurred, provided, however, that if through no fault of the STATE acceptance has not occurred by [insert final acceptance date here], the STATE may cancel this contract and return all draft Deliverables and shall not be obligated to CONTRACTOR for any amounts hereunder.

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. It is understood that funds for this contract are being provided under VAWA STOP Courts OFP 2011 grant program.

- VII. **STATE'S AUTHORIZED REPRESENTATIVE.** The STATE'S Authorized Representative for the purposes of administration of this contract is Mark Moore, Director, State Court Administrator's Office, Information Technology Division, 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.

XI. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor for a minimum period of six years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.

XII. **CONFIDENTIALITY, DISCLOSURE AND USE.**

A. **General.** CONTRACTOR shall not disclose to any third party (except, where applicable, CONTRACTOR's STATE approved subcontractor [insert full legal name of subcontractor]), which must first sign a confidentiality, participation and assignment of rights agreement in a form acceptable to the STATE) any information that is both: (1) made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform hereunder or is created, gathered, generated or acquired in accordance with this contract; and (2) inaccessible to the public pursuant to the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time. If the CONTRACTOR receives a request to release the information referred to in this Clause, the CONTRACTOR must immediately notify the STATE. The STATE will give the CONTRACTOR instructions concerning the release of the information to the requesting party before the information is released.

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

1. **State Programs.** The computer application programs made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as "State Programs." The STATE is the copyright owner of the State Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the State Programs, and all analysis and design specifications, programming specifications, source code, algorithms, and information contained in technical reference manuals pertaining to the State Programs, are trade secret information of the STATE. The computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform

its obligations hereunder, are subject to claims of trade secret and copyright ownership by the respective licensors and will be treated by CONTRACTOR in the same manner as trade secret information of the STATE. In addition, CONTRACTOR will familiarize itself with and abide by the terms and conditions of the license agreements applicable to such third party software. Without limiting the foregoing, CONTRACTOR may also be required to sign an appropriate confidentiality agreement with the STATE's software vendor if access to proprietary segments of the MNCIS application are necessary for CONTRACTOR's work hereunder.

2. **State Databases.** The computer databases made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as "State Databases." The STATE is the copyright owner of the State Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the State Databases and to their structure, sequence and organization are trade secret information of the STATE. All information contained within the State Databases is sensitive, confidential information and will be treated by CONTRACTOR in the same manner as trade secret information of the STATE.
3. **Marks.** The STATE claims that the marks "MNCIS," "Minnesota Court Information System," "CrimNet," "OFP," "Orders For Protection System," and "MARS" are trademarks and service marks of the STATE. CONTRACTOR shall neither have nor claim any right, title, or interest in or use of any trademark, service mark, or tradename 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 tradename of the STATE, in any way or for any purpose not specifically and expressly authorized by this contract. As used herein, "trade secret information of the STATE" means any information or compilation of information possessed by the STATE, or developed by CONTRACTOR in the performance of its obligations hereunder, which derives independent economic value, actual or potential, from not being generally known

to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of the STATE" does not, however, include information which was known to CONTRACTOR prior to CONTRACTOR'S receipt thereof, either directly or indirectly, from the STATE, information which is independently developed by CONTRACTOR without reference to or use of information received from the STATE, or information which would not qualify as trade secret information under Minnesota law. It will not be a violation of this section for CONTRACTOR to disclose any information received from the STATE pursuant to the order of a court or governmental authority of competent jurisdiction if CONTRACTOR notifies the State immediately upon receipt by CONTRACTOR of notice of the issuance of such an order.

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

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

related documentation, made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder, or any translations, compilations, or partial copies thereof are and remain the property of the respective licensors.

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

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

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

A. All right, title, and interest in and to any trade secret information of the STATE (as defined in sections XII. B.1, 2, and 4, above) developed by CONTRACTOR either

individually or jointly with others, and which arises out of the performance of this contract, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE free and clear of any liens, claims, or other encumbrances.

- 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. B.1, 2, and 4, above) was used and which was developed entirely on CONTRACTOR own time, and a) which does not relate i) directly to the business of the STATE or ii) to the STATE'S actual or demonstrably anticipated research or development, or b) which does not result from any work performed or materials provided by CONTRACTOR for the STATE.

- 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.

XIV. AFFIRMATIVE ACTION; EEOC.

- A. **Covered Contracts and Contractors.** If this contract exceeds \$100,000 and CONTRACTOR employed more than 40 full-time employees on a single working day during the previous twelve months in Minnesota or in the State where it has its principle place of business, then CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another State that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
- B. **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
- C. Minn. R. Parts 5000.3400-5000.3600 provide:
1. Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
 2. **Disabled Workers.** The contractor must comply with the following affirmative action requirements for disabled workers:
 - a. The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ,

advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- b. The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must State the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- e. The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

D. **Consequences.** The consequences for a contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the STATE.

- E. **Certification.** CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 (including, where applicable, federal affirmative action requirements) and is aware of the consequences for non-compliance.
- F. **EEOC Compliance Under VAWA STOP Courts OFP 2011 grant program.** Without limiting the foregoing, Contractor will comply with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39. Contractor assures that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, Contractor as recipient of that finding will forward a copy of the finding to the Office on Violence Against Women.
- XV. **WORKERS' COMPENSATION.** In accordance with the provisions of Minnesota Statutes, Section 176.182, as enacted, the CONTRACTOR shall provide acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, subdivision 2, as enacted, prior to commencement of any duties to be performed under this contract.
- XVI. **ANTITRUST.** CONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

XVII. OTHER PROVISIONS.

A. Warranties.

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

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

3. **Mutual Representations and Warranties.** CONTRACTOR and the STATE each represent and warrant to the other that: a) it has the full right, power and authority to enter into this contract and to perform fully all of its obligations hereunder; b) it is free of any obligation or restriction that would prevent it from entering into this contract or from performing fully any of its obligations hereunder; and c) it has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this contract.
- B. **Patent and Copyright Indemnity.** Without limiting section X, CONTRACTOR shall indemnify the STATE and hold it harmless against any claim that the work performed or material provided hereunder infringes or violates the patent, copyright, or trade secret rights of any third party. CONTRACTOR shall pay any and all resulting costs, expenses (including attorney's fees), damages and/or liabilities associated with or resulting from any such claim.
- C. **Relationship of the Parties.** CONTRACTOR is an independent contractor and shall not be deemed for any purpose to be an employee of the STATE. CONTRACTOR understands and agrees that the STATE is not withholding any taxes from the fees paid to CONTRACTOR pursuant to this contract and that CONTRACTOR is solely responsible for any taxes and other amounts to be paid as a result of the fees paid to CONTRACTOR pursuant to this contract. Neither CONTRACTOR nor the STATE shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.
- D. **Consent to Release of Certain Data.** Under Minn. Stat. § 270C.65 and other applicable law, CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the STATE, to federal and State tax agencies and State personnel involved in the payment of State obligations. These identification numbers may be used in the enforcement of federal and State tax laws which could result in action requiring CONTRACTOR to file State tax returns and pay delinquent State tax liabilities, if any.
- E. **Publicity.** Any publicity regarding the subject matter of this contract must: (1) identify the STATE as the sponsoring agency; (2) must State that “this project was supported by

Grant No. 2009-WF-AX-0007 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily represent the views of the Department of Justice, Office on Violence Against Women;” and (3) must not be released without the prior written approval from the STATE’S Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for CONTRACTOR individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

- F. **Endorsement.** CONTRACTOR must not claim that the STATE endorses its products or services.

- G. **Non-Exclusivity.** This contract shall not preclude CONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under this contract; provided, however, that such materials prepared by CONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as precluding or limiting in any way the right of CONTRACTOR to provide computer consulting and programming services or other services of any kind to any person or entity as CONTRACTOR in its sole discretion deems appropriate.

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

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

J. **Miscellaneous.**

1. The provisions of sections VII, X, XI, XII, XIII, XVI, and XVII shall survive any cancellation or termination of this contract, as shall any other provisions which by their nature would be intended or expected to survive such cancellation or termination.
2. Captions are for convenient reference and do not constitute a part of this contract.
3. The failure by either Party at any time to enforce any of the provisions of this contract or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this contract. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
4. This contract shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the State of Minnesota, without regard to Minnesota's choice of law provisions. Any action arising out of or relating to this contract, its performance, enforcement or breach will be venued in a State or federal court situated within the State of Minnesota. CONTRACTOR hereby irrevocably consents and

submits itself to the personal jurisdiction of said courts for that purpose.

5. Every provision of this contract shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this contract so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this contract, and all other provisions shall remain in full force and effect.

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

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

1. CONTRACTOR:

<p>CONTRACTOR certifies that the appropriate persons have executed the contract on behalf of CONTRACTOR as required by applicable articles, by-laws, resolutions or ordinances.</p> <p>(If a corporation with more than one individual serving as corporate officer, two corporate officers must execute)</p>
<p>By: SAMPLE ONLY; NOT INTENDED AS OFFER</p>
<p>Title:</p>
<p>Date:</p>
<p>By: SAMPLE ONLY; NOT INTENDED AS OFFER</p>
<p>Title:</p>
<p>Date:</p>

3. Funds have been encumbered for STATE by: approved for STATE by:

<p>By:</p>
<p>Title:</p>
<p>Date:</p>
<p>Contract No.:</p>
<p>P.O. No.:</p>

2. STATE:

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

4. Form and execution

<p>By:</p>
<p>Title: Legal Counsel Division</p>
<p>Date:</p>
<p> </p>
<p> </p>

APPENDIX IV

STATE OF MINNESOTA CONFIDENTIALITY, PARTICIPATION AND ASSIGNMENT OF RIGHTS CONTRACT SAMPLE 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's full legal name]___]. SUBCONTRACTOR'S participation in the Project requires, among other things, disclosure to CONTRACTOR of confidential STATE information and authorship by SUBCONTRACTOR of copyrightable subject matter which the STATE and SUBCONTRACTOR intend to be owned by the STATE. The STATE is willing to permit SUBCONTRACTOR to participate in the Project as an independent contractor under contract with ___[enter general contractor full legal name]___ pursuant to the terms and conditions set forth in this contract.

Contract

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

- I. **SCOPE OF, AND PAYMENT FOR, PARTICIPATION.** ___[enter general contractor full legal name]___ and SUBCONTRACTOR will determine the scope of SUBCONTRACTOR's engagement and the terms of their relationship with one another, and SUBCONTRACTOR will look solely to ___[enter general contractor full legal name]___ for payment under its contract with ___[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.
- 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; 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. 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. **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 tradename 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 tradename of the STATE, in any way or for any purpose not specifically and expressly authorized by this contract. As used herein, "trade secret information of the STATE" means any information or compilation of information possessed by the STATE, or developed by SUBCONTRACTOR in the performance of its obligations hereunder, which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of the STATE" does not, however, include information which was known to SUBCONTRACTOR prior to SUBCONTRACTOR'S receipt thereof, either directly or indirectly, from the STATE, information which is independently developed by SUBCONTRACTOR without reference to or use of information received from the STATE, or information which would not qualify as trade secret information under Minnesota law. It will not be a violation of this section for SUBCONTRACTOR to disclose any information received from the STATE pursuant to the order of a court or governmental authority of competent jurisdiction if SUBCONTRACTOR notifies the state immediately upon receipt by SUBCONTRACTOR of notice of the issuance of such an order.

 5. **Proprietary Notices.** SUBCONTRACTOR will advise its employees and permitted subcontractors who are permitted access to any of the State Programs, State Databases, or trade secret information of the STATE of the restrictions upon duplication, disclosure and use contained in this contract. Without limiting the foregoing, SUBCONTRACTOR shall include in and/or on any copy or translation of, or derivative work based upon, any of the State Programs, the State Databases, or trade secret information of the STATE, or any part thereof, and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to SUBCONTRACTOR by the STATE, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.
- C. **Inspection and Return of State Property.** All documents, encoded media, and other tangible items made available to CONTRACTOR by the STATE, or prepared, generated or created by SUBCONTRACTOR in SUBCONTRACTOR'S participation in the Project, are and will be exclusively the property of the STATE and will be available for inspection by the STATE upon request. Upon completion of SUBCONTRACTOR'S participation in the Project, SUBCONTRACTOR will, upon the STATE'S request, promptly deliver to the STATE any or all such documents, encoded media and other items in its possession, including all complete or partial copies, recordings, abstracts, notes or reproductions of any kind made from or about such documents, media, items, or information contained therein. SUBCONTRACTOR and the STATE acknowledge that all computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to SUBCONTRACTOR in order to permit SUBCONTRACTOR to perform its obligations hereunder, or any translations, compilations, or partial copies thereof are and remain the property of the respective licensors.

- D. **Injunctive Relief.** SUBCONTRACTOR acknowledges that the STATE will be irreparably harmed if SUBCONTRACTOR'S obligations under sections VIII and IX of this contract are not specifically enforced and that the STATE would not have an adequate remedy at law in the event of an actual or threatened violation by SUBCONTRACTOR of its obligations. Therefore, SUBCONTRACTOR agrees that the STATE shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violation or breach by SUBCONTRACTOR without the necessity of the STATE showing actual damages or that monetary damages would not afford an adequate remedy. SUBCONTRACTOR shall be liable to the State for reasonable attorney's fees incurred by the STATE in obtaining any relief pursuant to this section.
- E. **Nondisclosure Indemnity.** Without limiting section VI, SUBCONTRACTOR agrees to indemnify, defend and save harmless the STATE and its agents, officers and employees from and against any and all claims by Third Parties that are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly and proximately from SUBCONTRACTOR'S violation of the non-disclosure provisions hereof. The STATE shall provide SUBCONTRACTOR with prompt notice of any claim for which indemnification may be sought hereunder and shall cooperate in all reasonable respects with SUBCONTRACTOR in connection with any such claim. SUBCONTRACTOR shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.

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

- A. All right, title, and interest in and to any trade secret information of the STATE (as defined in sections VIII(B)(1), (2), and (4) above) developed by SUBCONTRACTOR either individually or jointly with others, and which arises out of SUBCONTRACTOR'S participation in the Project, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE free and clear of any liens, claims, or other encumbrances.
- 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(B)(1), (2), and (4), above) was used and which was developed entirely on SUBCONTRACTOR'S own time, and (a) which does not relate (i) directly to the business of the STATE or (ii) to the STATE'S actual or demonstrably anticipated research or development, or (b) which does not result from any work performed or materials provided by SUBCONTRACTOR for the STATE.

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's full legal 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, 125 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:

2. STATE:

By:
Title:
Date:

By: SAMPLE ONLY, NOT INTENDED AS OFFER
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: _____

II. 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)