

**APPENDIX IV
SAMPLE
CONTRACT**

THIS CONTRACT, and amendments and supplements thereto, is between the State of Minnesota, acting through its Office of Lawyers Professional Responsibility, address 1500 Landmark Towers, 345 St. Peter Street, Saint Paul, Minnesota 55102 (hereinafter “STATE”) and VENDOR (hereinafter “CONTRACTOR”).

Recitals

The STATE has an internal system (hereinafter “**Existing Application**”) that it uses to track complaints, complainants, respondents, and many other items. The Existing Application is about 20 years old, and has many issues with accuracy, usability, and data integrity. The STATE would like to redevelop the Existing Application to improve quality and add functionality but lacks sufficient staff to perform the necessary detailed design, development, and testing of a new application (hereinafter “**NEW Application**”). CONTRACTOR has the necessary skill, and is willing to perform the detailed design, development and testing for the NEW Application using the Existing Application reports and spreadsheets as a basis for the NEW Application, along with feedback from STATE staff on appropriate changes and additional needs. CONTRACTOR is further willing to transfer to STATE all rights in and ownership of the NEW Application and related Documentation (as hereinafter defined).

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 services to design and implement a new data records information system integrating case related data where applicable, which will generate specified documents and generate specified management reports. The system shall be secure and comply with the data access and privacy policies of the Judicial Branch. The system shall also allow for attachments of different document types, allow for separate environments for development, quality assurance/training, and production; follow judicial branch standard brand look and feel for user interface; and allow for auditability of user activity, by creating logs that follow users path and allow for archiving of logs.

Services will generally be provided off-site with all necessary off-site equipment, supplies and related costs at CONTRACTOR’S expense. Except as otherwise agreed by the parties, meetings and presentations with the STATE will be held during core business hours of 9:00 a.m. to 4:00 p.m. Monday through Friday in State provided facilities.

All professional services required hereunder shall be furnished by CONTRACTOR’S employees _____, or specified subcontractors as needed for the project upon notification to and agreement by STATE, who must first sign a confidentiality, participation and assignment of rights agreement in a form acceptable to the STATE. CONTRACTOR’S duties include:

- A. Defining in conjunction with the STATE's project team, the high level project schedule and communication and reporting requirements;
 - B. Determining in consultation with STATE's project team a prioritized backlog of known user stories to serve as the Scope Document for the project and develop a more detailed schedule to manage the development effort and documenting functional requirements and non-functional requirements such as architectural constraints, performance requirements, reliability, scalability, supportability and availability;
 - C. Designing and developing using the XXXXXXXXXX approach the software to meet the project requirements and providing XXXXXXXXXX documentation for each;
 - D. Developing a test plan;
 - E. Testing program design, interfaces, reports, and data conversion in development mode;
 - F. Testing program design, interfaces, reports, and data conversion in production mode at an STATE'S site;
 - G. Designing and implementing training for system users and Help Desk support personnel including the production of training material.
 - H. Producing monthly status reports and any requested reports to inform the STATE of progress throughout the life of the project;
 - I. Facilitating the participation of STATE'S representative in standups as requested;
 - J. Producing the following project artifacts: project schedule; issues list; risk analysis document. Communications plan; contingency plan, data conversion plan, post production support plan, and system and user guides in a format(s) specified by the STATE;
 - K. Providing maintenance support for 90 days following full production roll out at no additional cost the STATE to ensure that the deliverables conform to specification and the developed software operates correctly in conformance with the specifications, functionality and capabilities of the specifications.
- II. **DUTIES.** The STATE will provide contractor access to and prioritization of staff, subject matter experts, and technology resources within its control. The STATE will use its best efforts working through SCAO IT staff to ensure that CONTRACTOR has timely access to data and remote access (RDP) to development and QA servers, and administrator rights to development servers.
- III. **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 for each job category an hourly amount in US dollars as follows: Project Manager - \$_____; Business Analyst - \$_____; Developer I - \$_____; Developer II - \$_____. The total obligation of the STATE for all compensation and reimbursements to CONTRACTOR shall not exceed _____ dollars (US \$_____).

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 _____ as its agent for approval of such expenses.

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

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

V. **SERVICE OR MAINTENANCE AGREEMENTS.** Any Service or Maintenance Agreement between the CONTRACTOR and STATE will begin once the STATE has accepted the implementation of the product and all issues with implementation have been resolved or satisfactorily addressed.

VI. **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.

VII. **TERMS OF CONTRACT.** This contract shall not be effective until approved as to form and execution by the STATE’s Legal Counsel, and upon such approval the effective date shall be deemed to be _____. This contract shall remain in effect until _____, unless terminated or cancelled as provided herein.

VIII. 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 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 Supreme Court, 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.

IX. **STATE'S AUTHORIZED REPRESENTATIVE.** The STATE'S Authorized Representative for the purposes of administration of this contract is _____, Director 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 III (B).

X. **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.

XI. **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.

XII. **LIABILITY.** CONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by the STATE, arising from the performance of this contract by CONTRACTOR or CONTRACTOR's agents or employees. This clause shall not be construed to bar any legal remedies CONTRACTOR may have for the STATE's failure to fulfill its obligations pursuant to this contract. Without limiting the foregoing, CONTRACTOR's liability includes liability for the direct and verifiable costs to recreate any lost or damaged STATE records that are capable of being recreated using commercially reasonable efforts.

XIII. **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 (6) years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.

XIV. **CONFIDENTIALITY, DISCLOSURE AND USE.**

A. **General.** CONTRACTOR shall not disclose to any third party (except, where applicable, CONTRACTOR's STATE APPROVED 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 any application is necessary for CONTRACTOR's work hereunder.

2. **State Databases.** The computer databases made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as “State Databases.” The STATE is the copyright owner of the State Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the State Databases and to their structure, sequence and organization are trade secret information of the STATE. All information contained within the State Databases is sensitive, confidential information and will be treated by CONTRACTOR in the same manner as trade secret information of the STATE. Without limiting any of the foregoing, CONTRACTOR understands and agrees that to the extent that any records made available by the STATE to CONTRACTOR hereunder are publicly-accessible, the STATE retains all rights it possesses in and to such records and CONTRACTOR has no title or ownership rights, including any right to sell, resell, disclose, redisclose, recombine, reconfigure or retain such records except: (i) as expressly required for CONTRACTOR’s compliance with this contract; or (ii) to the extent that it has purchased or obtained the same from the State on the same terms and via the same means and to the same extent as other members of the public.
3. **Marks.** The STATE claims that the marks “MNCIS,” “CrimNet,” “SJIS,” and “MARS” are trademarks and service marks of the Supreme Court or of other agencies of the State of Minnesota. 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 or other agencies of the State of Minnesota.
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.
5. 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.

6. **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.

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

XVI. AFFIRMATIVE ACTION.

- A. **Covered Contracts and Contractors.** If this contract exceeds \$100,000 and CONTRACTOR employed more than 40 full-time employees on a single working day during the previous twelve months in Minnesota or in the state where it has its principle place of business, then CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
- B. **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
- C. Minn. R. Parts 5000.3400-5000.3600 provide:
 - 1. Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's

compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

2. **Disabled Workers.** The contractor must comply with the following affirmative action requirements for disabled workers:
 - a. The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - b. The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - e. The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

- D. Consequences.** The consequences for a contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not

limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the STATE.

- E. **Certification.** CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for non-compliance.

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

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

- B. **Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows: \$2,000,000- per occurrence Combined Single limit for Bodily Injury and Property Damage. In addition, Owned, Hired, and Non-owned Automobile coverages shall be included.

- C. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows: \$2,000,000 - per occurrence; \$2,000,000 - annual aggregate;\$2,000,000 - annual aggregate Products/Completed Operations.

The following coverages shall be included: Premises and Operations Bodily Injury and Property Damage; Personal and Advertising Injury; Blanket Contractual Liability; Products and Completed Operations Liability. State of Minnesota shall be named as an Additional Insured.

D. Professional/Technical, Errors and Omissions, including Network Security and Privacy Liability Insurance (or equivalent Network Security and Privacy Liability coverage endorsed on another form of liability coverage or written as a standalone policy):

This policy will provide coverage for all claims CONTRACTOR may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CONTRACTOR's professional services required under the contract. CONTRACTOR is required to carry the following **minimum** limits:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

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

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

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

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

XVIII. **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.

XIX. **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 employees _____, or specified others upon notification to and agreement by STATE, which must first sign a confidentiality, participation and assignment of rights agreement in a form acceptable to the STATE and that: (a) the employees have 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 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 (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 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 from performing services hereunder, and CONTRACTOR shall ensure that no such disqualified employee shall have

any further access to the confidential information of the STATE.

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

written approval from the STATE's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for CONTRACTOR individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

- F. **Endorsement.** CONTRACTOR must not claim that the STATE endorses its products or services.
- G. **Non-Exclusivity.** This contract shall not preclude CONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under this contract; provided, however, that such materials prepared by CONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as precluding or limiting in any way the right of CONTRACTOR to provide computer consulting and programming services or other services of any kind to any person or entity as CONTRACTOR in its sole discretion deems appropriate.
- H. **Notices.** Any written notice hereunder shall be deemed to have been received when: (A) personally delivered; (B) sent by confirmed facsimile transmission or telegram; (C) sent by commercial overnight courier with written verification of receipt; or (D) seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at: (1) if to CONTRACTOR, at the CONTRACTOR'S address set forth in the opening paragraph of the contract; (2) if to the STATE, at the STATE's address set forth in the opening paragraph of the contract, and (3) at such other address of which written notice has been given in accordance herewith.
- I. **Facilities and Use Conditions.** Without limiting CONTRACTOR's responsibilities under any other section of this contract, to the extent that CONTRACTOR utilizes STATE provided on-site facilities (including, but not limited to, computers, desks, Internet connections, etc.) to perform CONTRACTOR's duties under this contract, CONTRACTOR must comply with all policies of the STATE and the Minnesota Judicial Branch as they relate to the acceptable use or operation of STATE facilities, including, without limitation, the Minnesota State Court System Policies on the Use of the Internet and Other Electronic Communication Tools and Drug Free Workplace as the same may be amended and replaced from time to time.
- J. **Miscellaneous.**
 - 1. The provisions of sections VIII, 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.

[Continuation on next page for signature blocks.]

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

1. CONTRACTOR:

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

2. STATE:

Person signing certifies that applicable procurement policies have been followed. Where contracts and amendments exceed \$50,000, signature of State Court Administrator or his/her Deputy is also required (box 5).
By:
Title: <i>Director</i>
Date:
By:
Title: <i>Information Technology Division Director</i>
Date:

3. Funds have been encumbered for STATE by:

By:
Title:
Date:
Contract No.

4. SCAO approval if amount exceed \$50,000:

By:
Title: <i>State Court Administrator/Deputy</i>
Date:

5. Form and execution approved for

By:
Title: <i>Senior Legal Counsel. State Court Administration</i>
Date: