

**The following is a sample of the State of Minnesota's standard professional and technical services contract.**

**STATE OF MINNESOTA  
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT**

This contract is between the State of Minnesota, acting through its commissioner of \_\_\_\_\_ ("State") and \_\_\_\_\_ ("Contractor").

**Recitals**

1. Under Minn. Stat. § 15.061 [INSERT ADDITIONAL STATUTORY AUTHORIZATION IF NECESSARY] the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of [ADD BRIEF NARRATIVE OF THE PURPOSE OF THE CONTRACT].
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.

**Contract**

**1 Term of Contract**

1.1 **Effective date:** [SPELL OUT FULL DATE (e.g., April 1, 2005)], or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

**The Contractor must not begin work under this contract until this contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.**

1.2 **Expiration date:** [SPELL OUT FULL DATE (e.g., April 1, 2005)], or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 14 Data Disclosure.

**2 Contractor's Duties**

The Contractor, who is not a state employee, will:

**3 Time**

The Contractor must comply with all the time requirements described in this contract. In the performance of this contract, time is of the essence.

**4 Consideration and Payment**

4.1 **Consideration.** The State will pay for all services performed by the Contractor under this contract as follows:

(A) **Compensation.** The Contractor will be paid \_\_\_\_\_

(B) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this contract will not exceed \$ [INSERT TOTAL TRAVEL BUDGET HERE. IF NONE, INSERT "\$0.00"]; provided that the Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations, which is incorporated in to this contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has

received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

(C) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Contractor under this contract will not exceed \$[THIS MUST BE THE TOTAL OF 4.1(A) AND 4.1(B) ABOVE]. CFMS Contract No. \_\_\_\_\_ P/T Contract (Rev. 1/08) 2

#### 4.2. **Payment**

(A) **Invoices.** The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:

(B) **Retainage.** Under Minnesota Statutes Section 16C.08, subdivision 5(b), no more than 90% of the amount due under this contract may be paid until the final product of this contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this contract.

(C) **Federal funds.** (Where applicable, if blank this section does not apply) Payments under this contract will be made from federal funds obtained by the State through Title \_\_\_\_\_ CFDA number \_\_\_\_\_ of the \_\_\_\_\_ Act of \_\_\_\_\_. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

#### **5 Conditions of Payment**

All services provided by the Contractor under this contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

#### **6 Authorized Representatives**

The State's Authorized Representative is [NAME, TITLE, ADDRESS, TELEPHONE NUMBER], or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is [NAME, TITLE, ADDRESS, TELEPHONE NUMBER], or his/her successor. If the Contractor's Authorized Representative changes at any time during this contract, the Contractor must immediately notify the State.

#### **7 Assignment, Amendments, Waiver, and Contract Complete**

7.1 **Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this contract, or their successors in office.

7.2 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.

7.3 **Waiver.** If the State fails to enforce any provision of this contract, that failure does not waive the provision or its right to enforce it.

7.4 **Contract Complete.** This contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

#### **8 Liability**

The Contractor must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this contract by the Contractor or the Contractor's agents or employees. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligations under this contract. CFMS Contract No. \_\_\_\_\_ P/T Contract

## **9 State Audits**

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this contract.

## **10 Government Data Practices and Intellectual Property**

10.1. ***Government Data Practices.*** The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the judicial branch, with 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) as it applies to all data provided by the State under this contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

### **10.2. *Intellectual Property Rights.***

- (A) ***Intellectual Property Rights.*** The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this contract*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this contract. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of this contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

### **1. *Obligations***

- a. ***Notification.*** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this contract, the Contractor will

immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

b. *Representation.* The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the

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State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

### **11 Workers' Compensation and Other Insurance**

Contractor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this Contract.

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

### **12 Publicity and Endorsement**

12.1 **Publicity.** Any publicity regarding the subject matter of this contract must identify the State as the sponsoring agency and must not be released without 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 the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

12.2 **Endorsement.** The Contractor must not claim that the State endorses its products or services.

### **13 Governing Law, Jurisdiction, and Venue**

Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

### **14 Data Disclosure**

Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, the 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 agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

### **15 Payment to Subcontractors**

(If applicable) As required by Minn. Stat. § 16A.1245, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

### **16 Termination**

16.1 **Termination by the State.** The State or commissioner of Administration may cancel this contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon

termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed. CFMS Contract No. \_\_\_\_\_ P/T Contract (Rev.1/08) 5

16.2 **Termination for Insufficient Funding.** The State may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

**17 Minn. Stat. § 181.59**

The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

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

**DELETE THIS SECTION IF YOUR TOTAL CONTRACT VALUE IS UNDER \$100,000**

**18 Affirmative Action Requirements for Contracts in Excess of \$100,000 and if the Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business**

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

18.1 **Covered Contracts and Contractors.** If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the 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 and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

18.2 **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. CFMS Contract No. \_\_\_\_\_

18.3 ***Minn. R. 5000.3400-5000.3600.***

(A) *General.* Minn. R. 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. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

(B) *Disabled Workers.* The Contractor must comply with the following affirmative action requirements for disabled workers.

(1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 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.

(C) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent

plans, and termination of all or part of this contract by the Commissioner or the State.

(D) *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

### **19 Foreign Outsourcing**

Contractor agrees that the disclosures and certifications made in its Location of Service Disclosure and Certification Form submitted with its proposal are true, accurate and incorporated into this contract by reference.

### **20 Employee Status**

By order of the Governor's Executive Order 08-01, if this contract, including any extension options, is or could be in excess of \$50,000, Contractor certifies that it and its subcontractors:

- 1.** Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and
- 2.** By the date of the performance of services under this contract, Contractor and all its subcontractors have implemented or are in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

Contractor shall obtain certifications of compliance with this section from all subcontractors who will participate in the performance of this contract. Subcontractor certifications shall be maintained by Contractor and made available to the state upon request. If Contractor or its subcontractors are not in compliance with 1 or 2 above or have not begun or implemented the *E-Verify* program for all newly hired employees performing work under the contract, the state reserves the right to determine what action it may take including but not limited to, cancelling the contract and/or suspending or debarring the contractor from state purchasing.

**[Signatures as required by the state.]**