

NASPO ValuePoint
PARTICIPATING ADDENDUM



**SOFTWARE VALUE ADDED RESELLER (SVAR)
LED BY THE STATE OF ARIZONA**

Master Agreement #: CTR060031

MN Contract ID #: 232822

Contractor: Zones

Participating Entity: **STATE OF MINNESOTA**

This Participating Addendum is entered into by Contractor and Participating Entity (collectively, the "Parties").

Scope and Participation:

1. Scope:

- This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above.
- This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above, except the following:

Any scope exclusions specified herein apply only to this Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Arizona and Contractor for Software Value Added Reseller (SVAR). Subject to prior approval by the State Chief Procurement Official, this Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Term:

- This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- This Participating Addendum shall become effective as of the date of the last signature below and shall terminate on July 31, 2025, unless terminated sooner or otherwise amended in accordance with the terms set forth herein. Notwithstanding the previous, in no event shall the term of the Participating Addendum exceed the term of the Master Agreement, as amended.

4. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:

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CONTRACTOR:

Name:	Patricia Karakash, SLED Contract Manager
Address:	1102 15 th St. SW, Auburn, WA 98001
Telephone:	(312)972-9300
Fax:	
Email:	Govedcontracts@zones.com

PARTICIPATING ENTITY:

Name:	Matt Hassenstab
Address:	50 Sherburne Ave. Saint Paul, MN 55155
Telephone:	651.201.2431
Fax:	
Email:	Matt.Hassenstab@state.mn.us

Participating Entity Modifications and Additions to the Master Agreement

- This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor.
- This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions:**

The terms and conditions of this Participating Addendum, including Minnesota Exhibit A which is attached and hereby incorporated by reference into this Participating Addendum, shall prevail over directly conflicting terms and conditions in the Master Agreement. The terms of this Participating Addendum and the Master Agreement shall be interpreted as cumulative and complimentary to the extent possible.

Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

- Lease Agreements:** Lease purchase and term leases are allowable only for Purchasing Entities whose rules and regulations permit leasing of Software. Any Lease agreement is unenforceable without full review and approval of the customer legal counsel.
- Subcontractors:** All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-

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specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.

7. Orders: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing and other terms and conditions of, the Master Agreement (as modified by this Participating Addendum) unless the parties to the order agree in writing that another contract or agreement applies to the order.
8. Insurance: Contractor must be capable of furnishing the products and services as outlined in the Master Agreement and must be able to provide proof of insurance in accordance with the terms of this Participating Addendum and the Master Contract.

If Contractor is the product or service provider, and is directly accepting and shipping orders, the Certificate of Insurance must be in its name and must meet all of the requirements outlined in the solicitation. The Contract will not be executed until the required insurance certificate is received and approved by the State.

Upon notification of award, and within seven (7) days of notification, the awarded vendor(s) is(are) to provide a Certificate of Insurance with the coverage and amounts called for in the Participating Addendum. Any Contract awarded will not be executed until the Certificate of Insurance has been received and approved by the State. The State reserves the right to rescind the Contract award if the vendor does not provide the Certificate of Insurance within the required time.

9. Intellectual Property Indemnification (VAR):

Contractor is a value-added reseller ("VAR") of all third-party products, not the original equipment manufacturer, licensor, or distributor ("OEM") and therefore disclaims any indemnification responsibility regarding third party products provided under this Agreement. Contractor shall forward the indemnifications to State which are provided to Contractor by the OEM of that product and to the extent granted by the OEM, State shall be the beneficiary of the OEM's indemnifications with respect to the product. Contractor is not a party to any such terms between State and OEM and State agrees to look solely to the OEM for satisfaction of any and all indemnification claims related to that OEM's product.

10. Audit Clause: Any contract or pass-through disbursement of public funds to a vendor of goods or services or a grantee must expressly or implicitly contain an audit clause that provides that the books, records, documents, and accounting practices and procedures of the vendor or other party relevant to the contract are subject to examination by the contracting agency and either the Legislative Auditor or State Auditor, whichever is appropriate, for a minimum of six years.

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IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

PARTICIPATING ENTITY

CONTRACTOR

Signature: DocuSigned by: <i>Matt Hassenstab</i> 6005AE573CD4486...	Signature: DocuSigned by: <i>Jon Bailey</i> 5B6D1ECB4CD0441...
Name: Matt Hassenstab	Name: Jon Bailey
Title: Acquisition Management Specialist	Title: VP, Business and Legal Affairs
Date: 7/26/2023	Date: 7/26/2023
Signature: DocuSigned by: <i>Andy Doran</i> 68D02A26D7604BA...	Signature:
Name: Andy Doran	Name:
Title: IT Acquisitions Supervisor	Title:
Date: 7/26/2023	Date:

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

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Minnesota Exhibit A**Minnesota General Terms, Conditions, and Specifications**

1. **DEFINITIONS.** For purposes of this Minnesota Exhibit A, the following definitions apply:
 - a. **CPV Members.** The Cooperative Purchasing Venture (CPV) program was established by Minn. Stat. § 16C.03, subd. 10, which authorizes the commissioner of the Minnesota Department of Administration (Commissioner of Administration) through its Office of State Procurement (OSP) to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with one or more governmental units and other entities as described in Minn. Stat. § 471.59, subd. 1 and Minn. Stat. § 16C.03, subd. 10. Based on this authority, the Commissioner of Administration enters into a joint powers agreement that designates OSP as the authorized purchasing agent for the governmental unit or other entity. Governmental units and other entities joining the program are given an access code which identifies them as CPV members and permits them to access the OSP website to get information about commodities and/or services available on the State of Minnesota (State) contracts. Governmental units and other entities who are not members of the CPV program are not authorized to use the contract prices. The Contract Vendor agrees to provide the contract to CPV members at the same prices, terms, conditions, and specifications. For additional information, visit the OSP website at www.mmd.admin.state.mn.us.
 - b. **State Agencies.** This term applies only to State agencies and departments, as defined in Minn. Stat. §§ 15.01 and 15.012.
 - c. **Ordering Entity.** This term applies to any State Agency or CPV Member when allowed in the Participating Addendum.
 - d. **State and State of Minnesota.** These two terms apply to the Minnesota Department of Administration, Office of State Procurement (OSP), representing the State of Minnesota as the contracting agency for the Participating Addendum. These terms also apply to the State's Department of Information Technology Services (MNIT) when acting within its statutorily defined contracting capacity.
 - e. **Minnesota Department of Information Technology Services (MNIT).** Minnesota's Information Technology agency. MNIT is responsible for providing or entering into managed services contracts for the provision, improvement, and development of business application software and related technical support services and other information technology systems and services to Minnesota state agencies pursuant to Minnesota Statute section 16E.016(a).
 - f. **Contract Vendor and Contractor.** These two terms apply to the awarded vendor from the NASPO ValuePoint Master Agreement that OSP selects to receive a Participating Addendum. These terms have the same meaning as "Reseller" and "Contractor" as used in the NASPO ValuePoint Master Agreement.

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- g. Contract.** Contract is defined as the Minnesota Participating Addendum, which incorporates the terms of the NASPO ValuePoint Master Agreement.
- h. Master Contract.** Master Contract is defined as the corresponding NASPO ValuePoint Master Agreement between NASPO ValuePoint and the Contractor.
- 2. ANTITRUST.** The Contract Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Participating Addendum resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State.
- 3. INSURANCE.** Prior to execution of the Participating Addendum, the Contract Vendor will be required to provide a copy of a Certificate of Insurance, including workers' compensation insurance coverage requirements of Minn. Stat. § 176.181 subd. 2, and other coverages per the insurance requirements if included in the Participating Addendum. Contract Vendor shall meet the insurance requirements of the Master Contract except where more specific or greater coverages are required by this Participating Addendum.
- 4. INDEMNIFICATION, HOLD HARMLESS, AND LIMITATION OF LIABILITY.** In accordance with the Master Contract, Contract Vendor shall indemnify, protect, save and hold harmless the State, its representatives and employees, from any and all claims or causes of action brought by third parties, including all legal fees incurred by the State arising from the grossly negligent or willfully misconducted performance of the Contract by the Contract Vendor or its agents, employees, or subcontractors which proximately causes death, personal injury, bodily harm, or property damage. This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the State's failure to fulfill its obligations pursuant to the Contract.
- For clarification and not as a limitation, the Contract Vendor hereby expressly extends, in addition to the other terms, conditions and specifications of the Contract, the foregoing defense and indemnification obligations to Cooperative Purchasing Venture (CPV) Members, including Board of Trustees of the Minnesota State Colleges and Universities, in addition to Agency as defined in Minn. Stat. 16.C.02, in addition to the legislative and judicial branches and constitutional offices of state government.
- 5. LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State and federal laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State.
- 6. GOVERNMENT DATA PRACTICES.** The Contract Vendor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, 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 to the

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Contract Vendor and all data provided to the State by the Contract Vendor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with the Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the State. The State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contract Vendor or the State.

Except to the extent that Vendor was complying with the instructions provided by the State as set forth in this section, The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Contract, the Contract Vendor shall retain responsibility under the terms of this article for such work.

- 7. GOVERNING LAW.** The Contract will be construed in accordance with and performance governed by the laws of the State of Minnesota. Except to the extent that the provisions of the Contract are clearly inconsistent therewith, the Contract shall not be governed by the Uniform Commercial Code (UCC)
- 8. JURISDICTION AND VENUE.** The Contract, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of the Contract or breach thereof shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota. The Contract Vendor voluntarily agrees to be subject to the jurisdiction of Minnesota for all proceedings arising out of the Contract, or any breach thereof.
- 9. HUMAN RIGHTS/AFFIRMATIVE ACTION.** The State requires affirmative action compliance by its Contract Vendors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.
 - a. Covered contracts and Contract Vendors. One-time acquisitions, or a contract for a predetermined amount of goods and/or services, where the amount of your response is in excess of \$100,000 requires completion of the Affirmative Action Certification page. If the solicitation is for a contract for an indeterminate amount of goods and/or services, and the State estimated total value of the contract exceeds \$100,000 whether it will be a multiple award contract or not, you must complete the Affirmative Action Certification page. If the contract dollar amount or the State estimated total contract amount exceeds

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\$100,000 and the Contract Vendor 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 principal place of business, the Contract Vendor must comply with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600. A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600 that had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months must have a certificate of compliance issued by the commissioner of the Department of Human Rights (certificate of compliance). A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 that did not have more than 40 full-time employees on a single working day during the previous 12 months within Minnesota but that did have more than 40 full-time employees in the state where it has its principal place of business and 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, subd. 1 requires the Contract Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the commissioner of the Department of Human Rights (commissioner) as indicated by a certificate of compliance. Minn. Stat. § 363A.36 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. 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 Contract Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. 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 parts 5000.3552-5000.3559.
- d. Disabled Workers. Minn. R. 5000.3550 provides the Contract Vendor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION 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.

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- 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. Where required by applicable law, 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.
- f. Consequences. The consequences of a Contract Vendor'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 the Contract by the commissioner or the State.
- g. Certification. The Contract Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

10. EQUAL PAY CERTIFICATION. If this Contract could be in excess of \$500,000, the Contract Vendor must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A Contract Vendor is exempt if it has not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where it has its primary place of business. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us. See Minnesota Exhibit D for more details and to complete Equal Pay Certification.

11. PAYMENT. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. Terms requesting payment

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in less than 30 days will be changed to read “Net 30 days.” The Ordering Entity is not required to pay the Contract Vendor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate Ordering Entity. In addition, all goods and/or services provided must meet all terms, conditions and specifications of the Contract and the ordering document and be accepted as satisfactory by the Ordering Entity before payment will be issued.

Conditions of Payment. The Contract Vendor under the Contract must be in accordance with the Contract as determined by the sole discretion of the State’s Authorized Representative and be in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Minnesota Secretary of State. The Contract Vendor will not receive payment for goods or services found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

- 12. PURCHASE ORDERS (PO).** The State requires that there will be no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the Contract. The Contract number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity’s purchase order constitutes a binding contract. The parties may agree through a Statement of Work to apply additional order-specific invoicing procedures when appropriate for the type of service ordered.
- 13. PURCHASING CARDS.** Contract Vendor will accept a purchasing card for order placement in addition to accepting a purchase order, without passing the processing fees for the purchasing card back to the State. The State’s single purchase limit is \$5,000 on the purchasing card.
- 14. TAXES.** Do not add sales tax to the prices being offered. State Agencies hold a Direct Payment Authorization Letter which is used to pay applicable taxes directly to the Department of Revenue. Contractors may go to <http://www.revenue.state.mn.us> to learn about the applicable sales tax (search “Fact Sheet 142”). If orders are issued by Cooperative Purchasing Venture (CPV) Members, the Contract Vendor should confirm all of the tax requirements with the ordering entity.
- 15. SHIPPING REQUIREMENTS.** All shipments shall be FOB Destination. Freight charges shall be prepaid and allowed unless otherwise stated in the NASPO ValuePoint Master Agreement.
- 16. DEFAULT.** All commodities and services furnished will be subject to inspection and acceptance by the Ordering Entity after delivery. No substitutions or cancellations are permitted without approval of the Ordering Entity. Back orders, failure to meet delivery requirements, or failures to meet specifications in the purchase order and/or the Contract authorizes the Ordering Entity to cancel the purchase order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the defaulting Contract Vendor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contract Vendor may be removed from the vendor’s list, suspended or debarred from receiving a Contract for failure to comply with the terms and

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conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.

17. ASSIGNMENT. The Contract Vendor shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's Authorized Representative. Such consent shall not be unreasonably withheld. The Contract Vendor shall give written notice to the State's Authorized Representative of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of the Contract. Failure to do so may result in the Contract Vendor being held in default. This consent requirement includes reassignment of the Contract due to a change in ownership, merger, or acquisition of the Contract Vendor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contract Vendor's right to assign the Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contract Vendor shall remain solely liable for all performance required and provided under the terms and conditions of the Contract.

18. INTELLECTUAL PROPERTY RIGHTS AND INTELLECTUAL PROPERTY INDEMNIFICATION. Applicable when Contract Vendor or an approved subcontractor is developing intellectual property for the State under a Statement of Work or Work Order.

(a) *Pre-Existing Intellectual Property Rights.* State and Contract Vendor shall each retain ownership of, and all rights, title, and interest in their own pre-existing intellectual property and all derivative works arising therefrom, subject to any license rights contained herein or otherwise executed between the parties. To the extent permitted by third party intellectual property rights, and subject to any license agreements executed between the parties, Contract Vendor grants to State an unlimited, royalty-free, paid up, perpetual, non-exclusive, irrevocable, non-transferable license to use and modify any of its pre-existing intellectual property or its ancillary or derivative works incorporated into any deliverable or otherwise delivered to the State, solely for use by the State, or State's contractors, for governmental purposes.

(b) *Intellectual property rights.* Except as set forth in Section 18(a), 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 any Custom Works and documents created specifically for the State and paid for under this Contract. The "Custom 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 uniquely for the State by the Contract Vendor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract and set forth in a Statement of Work or other ordering document as a Custom Work. "Works" includes documents. The "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 Contract Vendor, its employees, agents, or subcontractors, in the creation of a Custom Work. The documents will be the exclusive property of the State and

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all such documents must be immediately returned to the State by the Contract Vendor 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 Contract Vendor assigns all right, title, and interest it may have in the works and the documents to the State. The Contract Vendor 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.

(c) *Obligations*

(1) [Intentionally Omitted]

(2) Representation. The Contract Vendor warrants that the Custom Works provided or produced by the Contract Vendor in the performance of the Contract will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. The Contract Vendor must take all steps necessary to ensure that all intellectual property rights in the Custom Works and related documents are the sole property of the State, and that neither Contract Vendor nor its employees, agents, or subcontractors retain any interest in and to the Custom Works and documents. The Contract Vendor represents and warrants that the Custom Works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. In the event of any such claim by any third party against the State, the State shall promptly notify the Contract Vendor.

(3) Notwithstanding any other indemnity obligation contained herein, the Contract Vendor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contract Vendor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Custom Works or related documents infringe upon the intellectual property rights of others. The Contract Vendor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees.

19. PARTICIPATING ADDENDUM AMENDMENTS. Except as provided herein, the Participating Addendum shall be modified only by written amendment duly executed by an authorized representative of the State and the Contract Vendor. No alteration or variation of the terms and conditions of the Participating Addendum shall be valid unless made in writing and signed by the parties as required by law. Every amendment shall specify the date on which its provisions shall be effective. An approved Participating Addendum amendment means one approved by the authorized signatories of the Contract Vendor and the State as required by law.

20. TERMINATION OF THE PARTICIPATING ADDENDUM. Unless an applicable remedy allows for shorter notice or immediate termination, the Participating Addendum or any related Statement of Work may be canceled by the State or the Commissioner of Administration at any time, with or without cause, upon 30 days written notice to the Contract Vendor. In the event of such a cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, only for work or services satisfactorily performed and accepted. If the State terminates the Contract for default or other cause the

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Contract Vendor shall provide a pro-rated refund to the State for all prepaid but unused fees and services satisfactorily performed.

In the event the Contract either party is in default, the Participating Addendum is subject to cancellation should such default not be cured within thirty (30) days of receiving notice of default.

In the event of expiration, termination or cancellation of the Participating Addendum or Statement of Work for any reason the Contract Vendor shall, in accordance with the State's directions: (1) continue to provide any then-existing Services for as long as the State needs to transfer its data, software, security credentials including, but not limited to, any account root or access keys, and other assets to an alternate service or service provider; and/or (2) transfer the account with its existing IT environment and security credentials to the State or to a new third-party contract vendor of the State's choosing while minimizing service disruption. The Contract Vendor will be entitled to pro-rata payment at the pricing in effect prior to expiration, termination or cancellation of the Participating Addendum or Statement of Work for the continuing services for the period of time needed, subject to any other limitations within this Participating Addendum and other agreements between the State and the Contract Vendor.

The Contract Vendor may request to cancel the Participating Addendum for convenience, but must receive written approval from the State. Any term or condition that allows the Contract Vendor to terminate the Contract for convenience is null and void.

- 21. ADMINISTRATIVE PERSONNEL CHANGES.** After execution of this Participating Addendum the State must be notified of intended changes in the Contract Vendor's administrative personnel as soon as practicable.
- 22. PUBLICITY.** Any publicity given to the program, publications or services provided resulting from a State contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the State's Authorized Representative and the State's Assistant Director or designee of Office of State Procurement.

The Contract Vendor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of the Contract without the prior written consent of the State's Assistant Director or designee of the Office of State Procurement. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

- 23. AMERICANS WITH DISABILITIES ACT (ADA).** Products provided under the Contract must comply with the requirements of the Americans With Disabilities Act (ADA). The Contract Vendor's catalog and other marketing materials utilized to offer products under the Contract must state when a product is not in compliance. If any descriptive marketing materials are

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silent as to these requirements, the Contract Vendor agrees that the customer can assume the product meets or exceeds the ADA requirements.

24. NONVISUAL ACCESS STANDARDS. Pursuant to Minn. Stat. § 16C.145, the Contract Vendor shall comply with the following nonvisual technology access standards :

- a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards are not applicable for installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

25. USAGE REPORT. The Contract Vendor is required to furnish usage data to the State's Authorized Representative on a quarterly basis based on the state fiscal year which begins on July 1. The quarter periods are July 1 to September 30 (1st Quarter), October 1 to December 31 (2nd Quarter), January 1 to March 31 (3rd Quarter), and April 1 to June 30 (4th Quarter). The report on the Contract usage must consist of the total dollars expended by both State Agencies and CPV members. Failure to provide these reports may result in Contract cancellation. The State may request additional periodic or ad-hoc reports as necessary.

26. MINNESOTA REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE. On a quarterly basis, the Contract Vendor shall return to the Department of Administration, Office of State Procurement, a fee of 1% (.01 multiplication factor) of the total sales during that quarter, to assist with the cost of administering the Participating Addendum. The administrative fee shall be remitted to the State within 30 days of the end of the quarter. The quarter periods are July 1 to September 30 (1st Quarter), October 1 to December 31 (2nd Quarter), January 1 to March 31 (3rd Quarter), and April 1 to June 30 (4th Quarter). The Contract Vendor must provide a report detailing the total sales to State Agencies and CPV Members. The report must be submitted with the check on or before the required 30 days after the end of the quarter. Such administrative fees shall be passed through to the State Agencies as set forth in the NASPO VALUEPOINT Software Value-Added Reseller (SVAR) Awarded Price Model

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27. SEVERABILITY. If any provision of the Contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions; if the remainder of the Contract is capable of performance it will not be affected by the declaration or finding and will be fully performed.

28. ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE. In accordance with Minn. Stat. § 16A.40 the Contract Vendor is required to provide their bank routing information to the Minnesota Department of Finance to enable payments to be made through EFT.

29. COPYRIGHT. The Contract Vendor shall, to the extent provided by the manufacturer or software publisher, pass through any manufacturer/publisher commitments save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted composition, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

30. SURVIVABILITY. The following rights and duties of the State and Contract Vendor will survive the expiration or cancellation of the resulting Contract(s). These rights and duties include, but are not limited to the paragraphs on Indemnification, Hold Harmless, and Limitation of Liability, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Intellectual Property Indemnification, Publicity and Minnesota Reporting Requirements and Administrative Fees. Software licenses, warranty, maintenance agreements and service agreements that were entered into under the terms and conditions of the Agreement shall survive the expiration or termination of this Agreement.

31. IT ACCESSIBILITY STANDARDS.

The State of Minnesota (Executive branch state agencies) has developed [IT Accessibility Standards](http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf) effective September 1, 2010, which entails, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 Subparts A-D which can be viewed at: http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. If any issues arise due to nonconformance with the above mentioned accessibility Standards, the Contract Vendor agrees to provide alternative solutions upon request.

The responder should complete Exhibit A (VPAT for Section 508) and Exhibit B (VPAT for WCAG 2.0) attached herein for all software, hardware, and the website (as applicable) as proposed in response to the RFP. For systems with multiple interfaces (such as an admin and user interface), complete a WCAG VPAT for each interface. These documents may be scored according to the RFP evaluation.

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Responders are encouraged to reference the "[Vendor VPAT Guidance](#)" in the "Products" tab at <http://mn.gov/mnit/programs/accessibility/it-procurement.jsp> for information and instructions on completing the VPATs.

32. E-VERIFY CERTIFICATION. For services in excess of \$50,000, the Contract Vendor certifies that as of the date of services performed on behalf of the State, the Contract Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. This is required by Minnesota Statutes Section 16C.075. The Contract Vendor shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available on OSP website www.mmd.admin.state.mn.us.

All subcontractor certifications must be kept on file with the Contract Vendor and made available to the State upon request.

33. HAZARDOUS SUBSTANCES. To the extent that the goods to be supplied to the State by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide the State with Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.

34. SUBCONTRACTOR PAYMENT (When Applicable). In accordance with Minn. Stat. § 16A.1245, the Contract Vendor shall, within 10 days of receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contract Vendor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontractor that takes civil action against the Contract Vendor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action.

The Contract Vendor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under the Contract. In the event the Contract Vendor fails to make timely payments to a subcontractor or supplier, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contract Vendor and deduct said payment from any remaining amounts due the Contract Vendor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contract Vendor written notice that payment will be made directly to a subcontractor or supplier for undisputed services. If there are no remaining outstanding payments to the Contract Vendor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

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The obligation to make payments to a subcontractor or supplier resides with the contract vendor. Failure to make a payment on time may result in breach of this agreement.

35. Certification of Nondiscrimination (IN ACCORDANCE WITH MINN. STAT. § 16C.053)

The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

36. SOFTWARE AND LICENSING AGREEMENTS. Contract Vendor shall honor the terms and conditions of any volume licensing, enterprise, end user licensing, maintenance, cloud hosting agreements, and similar agreements governing the State's use of products and services as executed between the State and the Publisher. For avoidance of doubt, with respect to Software as a Service (SaaS) products, Contract Vendor shall at a minimum ensure compliance with Sections 15 (Information Security) and 16 (Software as a Service Terms and Conditions) of SECTION 2-C of the Master Contract whether or not the State has executed a SaaS agreement with the Publisher. Contract Vendor will work with the State to ensure that the appropriate governing documents are referenced on the Contract Vendor quote.

Upon request Contract Vendor will provide reasonable assistance in obtaining applicable licensing, maintenance or similar agreements that govern use of quoted products or services

37. TAXPAYER IDENTIFICATION: The Contract Vendor shall be registered as a vendor to the State in the SWIFT Procurement System. Registration must be done online at <http://www.mmb.state.mn.us/vendorresources>.**38. STATE'S NON-INDEMNIFICATION.** Nothing herein, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Contract Vendor, Contract Vendor's subcontractors, or Contract Vendor's agents. This shall extend to all agreements related to the subject matter of this Participating Addendum, and to all terms subsequently added, without regard to order of precedence.**39. ORDERING ENTITY.** The Contract Vendor will accept Orders and Statement of Work documents from the Office of MN.IT Services, and from eligible CPV members upon supplying the required Security Disclosure to such CPV Members. The State reserves the right to add additional State Agencies and CPV members, as defined in General Terms and Conditions section 1.Definitions, to the Contract upon mutual agreement by both parties.

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- 40. AUDIT COSTS.** If the State is required to pay Contract Vendor's audit and collection costs, and/or attorney's fees, the State is only required to pay such costs and/or fees up to an aggregate of \$5,000.
- 41. NO AUTOMATIC RENEWALS.** The State does not agree to any automatic renewals which require the payment of additional fees.
- 42. NO MANDATORY MEDIATION OR ARBITRATION.** Any term or condition that requires the parties to mediate or arbitrate is null and void. Voluntary dispute resolution procedures are valid to the extent allowed by law.
- 43. TERMS AND CONDITIONS LIMITED BY MINNESOTA LAW.** The State only agrees to the terms and conditions of the Contract to the extent permitted by Minnesota law.
- 44. STATE'S RIGHTS AND REMEDIES CUMULATIVE.** All rights and remedies provided in the Contract are cumulative and not exclusive of any other rights or remedies that may be available to the State, whether provided by law, equity, statute or otherwise.
- 45. CONTRACT VENDOR DISCLAIMERS OF WARRANTIES INVALID.** Except as set forth in Section 63, Any term or condition that excludes, disclaims, or limits a Contract Vendor warranty is null and void. [
- 46. DATA DISCLOSURE.** Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contract Vendor 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 Contract Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.
- 47. DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES, OR POLITICAL SUBDIVISIONS**
Contract Vendor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contract Vendor's certification is a material representation upon which the Contract award was based. Contract Vendor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
- 48. PROFESSIONAL/TECHNICAL (P/T) SERVICES**
For eligible Minnesota state agencies utilizing this contract, Professional/Technical Services **must** be within the scope of services available through the Master Contract.
- 49. RETAINAGE.** Under Minn. Stat. § 16C.08, subd. 2 (10), for Professional and Technical services performed under the terms of this Contract, no more than 90 percent of the amount

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due for those Professional and Technical Services may be paid until the final product has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contract Vendor has satisfactorily fulfilled those Professional and Technical Services.

50. FEDERAL FUNDS. Payments under this Contract may be made from federal funds obtained by the State. The Contract Vendor 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.

51. ORGANIZATIONAL CONFLICTS OF INTEREST

To the best of Contract Vendor's knowledge, execution and performance of this Contract does not give rise to a Conflict of Interest (as defined below). Each party agrees to promptly notify the other if, at any time during the term of this agreement, either party becomes aware that it has an actual or potential conflict of interest, including any relationship that may impair the party's objectivity or ability to perform its obligations hereunder (a "Conflict of Interest"). Upon such notice, the parties will meet and engage in good faith negotiations to resolve the alleged or potential conflict in accordance with the dispute resolution provision set forth in Section 8 of the Master Agreement ("State Contractual Remedies"). If the parties are unable to resolve the conflict after a reasonable time, the parties may mutually agree to terminate this Addendum in accordance with Section 9 of the Master Agreement ("Contract Termination").

52. REIMBURSEMENT OF PROFESSIONAL SERVICES

In addition to the terms and conditions set forth in the Master Agreement the parties hereby agree to insert the following sentences at the end of such subsection :

"Reimbursement of expenses related to the Provision of Professional Services, if any, shall be in accordance with the terms and conditions of the relevant Order and/or exhibit thereunder. In the event that the relevant Ordering Document does not include specific amounts or caps on expenses, the applicable Purchasing Entity shall not be liable to pay any expenses not explicitly agreed to in writing prior to the expenses being incurred."

53. CAUSE OF ACTION

Except for actions for nonpayment or breach of Contract Vendor's proprietary rights, no action, regardless of form, arising out of or relating to this Addendum may be brought more than six years after the cause of action has accrued.

54. IMMIGRATION STATUS CERTIFICATION

Contract Vendor agrees to comply with the Immigration Reform and Control Act of 1986 ("IRCA") in relation to all employees performing work in the United States. Contract Vendor does not knowingly employ person in violation of the United States immigration laws. As of the date of this Addendum, Contract Vendor has implemented the E-Verify program for all newly hired U.S.-based employees who will perform work on this Addendum in the United

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States. In connection with orders of Professional Services under this Addendum, Contract Vendor will include this clause or a substantially equivalent clause in all of its subcontracts issued under this Addendum and shall obtain the State of Minnesota-Immigration Status Certification from all subcontractors performing services under this Addendum and maintain such certifications for inspection by the Participating State if such inspection is requested by the Participating State. If Contract Vendor is not in compliance with this section and has not cured its non-compliance within 30 days of written specification of such non-compliance from the Participating State, the Participating State reserves the right to determine what action it may take, including but not limited to terminating this Addendum (in accordance with Section 10 of the Master Agreement) and/or suspending or debaring Contract Vendor from state purchasing in accordance with and subject to Minnesota law.

55. QUOTES – MINIMUM CONTENT. The content specified in Section 3.3.2 (Minimum Invoice Requirements) of SECTION 2-B (Pricing Document) of the Master Contract shall be placed by Contract Vendor on all **Quotes** submitted to the State, except for content that is clearly unknown at this stage (e.g., customer PO number).

In addition to any other information required by the Master Contract the subsequent invoice shall contain the final quantities, final pricing and the final term dates for subscription products and services.

To the extent not already required by the Master Contract, Contract Vendor shall include the following on each Quote provided to the State:

- a. Product description including part number and license/product type (e.g., SaaS Subscription, Cloud Hosting Fee, Term License, Maintenance and Support, and Installation Services) in a format compatible with the Online Catalog;
- b. To the extent known and applicable, the start and end dates of subscription license terms, maintenance and support terms, etc. If dates are to be determined, for example for new subscriptions, it should be made clear that any dates are estimates pending issuance of a Purchase Order from the State. Indicate “none” or “not applicable” if the product is not sold on a subscription or fixed term basis;
- c. The cost to the Contractor, the percentage increase/markup applied, and the total cost to the State;
- d. Quote-specific contact name, email address and telephone number;
- e. Quote date, expiration date and quote number. If the quote is re-issued or modified at a later date, the new quote shall include the date of revision and/or a new number such that each quote can be uniquely referenced;
- f. A clear reference that the products and services in the quote are being quoted under the terms of this Participating Addendum (including the State’s contract number) and/or the State’s Contract Release that incorporates this Participating Addendum;
- g. When known, reference to applicable terms and conditions between the State and the Publisher;
- h. Notes as needed to clarify the terms of the offer, provided that such notes are not in conflict with the Contract or with an agreement between the State and the Publisher.

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56. MULTI-YEAR QUOTES. In certain circumstances Contractor may issue a quote that spans multiple years. Such quote by itself does not bind the State to Product renewal and payment beyond the first year. If the State has entered into a written agreement with the Software Publisher that binds the State to a term of more than one year, the State is not obligated to use the same Reseller for all years of the term unless the State agrees to such an obligation in a duly executed document.

57. LICENSING AND RELATED TERMS AND CONDITIONS. Contractor is prohibited from including web links or other references to a Software Publisher's licensing, maintenance, support, hosting, or other terms and conditions on its quote documents or in attachments thereto unless (1) the reference is to a specific agreement that has been executed between the State and the Software Publisher, (2) the reference is to an agreement that Contractor has negotiated with the Software Publisher, Distributor and/or other party under the terms of the Master Agreement and that the State accepts in writing from a person with appropriate signature authority; or (3) Contractor provides notice to the State or applicable purchasing entity that reference to such terms and conditions will be included in the quote or purchase order. Notwithstanding anything to the contrary and in accordance with Section 3.5 of SECTION 2-C of the Master Agreement, the State does not agree to any term or condition from Reseller whether presented in a document or presented in a click-through or similar format that is in conflict with this Contract, the Master Contract, an agreement between the State and the Software Publisher, or Minnesota Law. No Contractor term or condition shall be constructed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law.

58. PERFORMANCE

Contractor agrees that, from and after the date that the applicable services commence, its performance of the Scope of Services will meet or exceed industry standard practices subject to the limitations and in accordance with the provisions set forth in this Contract. If the Services provided pursuant to this Contract are changed, modified or enhanced (whether by Change Order or through the provision of new Services), The State and the Contractor will review the current performance experience and will in good faith determine whether such experience should be adjusted and whether additional services should be implemented or whether services be removed. The following requirements shall also apply:

1. Failure to Perform

If Contractor fails to complete any deliverable, then Contractor shall:

- 1.1 Promptly perform a root-cause analysis to identify the cause of such failure;
- 1.2 Use commercially reasonable efforts to correct such failure and to begin meeting the requirements as promptly as practicable;

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- 1.3 Provide the State with a report detailing the cause of, and procedure for correcting, such Master Agreement failure; and
 - 1.4 If appropriate under the circumstances, take action to avoid such failure in the future.

2. Root-Cause Analysis

In the event of the Contractor's failure to perform required services or meet agreed upon service levels or other Contractor service standards as required by the State under this Contract, the Contractor shall perform an analysis of the cause of the service level problem and implement remediation steps as appropriate. The State shall have the right to review the analysis and approve the remediation steps prior to or subsequent to their implementation, as deemed appropriate by the State, if the remediation steps impact State assets or operational processes.

59. COMPENSATION

Should the Contractor fail to provide all required services or deliver work products, as agreed upon by State and the Contractor, the State shall be entitled to invoke applicable remedies, including but not limited to, withholding payment to the Contractor for the deficient services and declaring the Contractor in material breach of the Contract. If the Contractor is in any manner in default of any obligation or the Contractor's work or performance is determined by the State to be defective, sub-standard, or if audit exceptions are identified, the State may, in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default, defect, exception or sub-standard performance. Unless otherwise agreed upon in writing, the Contractor shall correct its mistakes or errors without additional cost to the State. The State shall be the sole determiner as to defective or sub-standard performance; the State shall in all-times be subject to a standard of reasonableness in its determination as to defective or sub-standard performance.

The Contractor shall fulfill their contractual requirements including the Deliverables identified in the Statement of Work and fulfill the roles and responsibilities described in the Statement of Work for a firm fixed price, inclusive of travel and travel-related expenses. The fixed amount shall be inclusive of any fees for the use of any third party products or services required for use in the performance of this Contract

60. CONTRACTOR PERFORMANCE REPORTS

Program management shall document Contractor performance, both exemplary and needing improvements where corrective action is needed or desired. Copies of corrective action reports will be forwarded to the Procurement Office for review and any necessary follow-up. The Procurement Office may contact the Contractor upon receipt of the report and may request corrective action. The Procurement Office shall discuss the Contractor's suggested corrective action plan with the Procurement Specialist for approval of the plan.

61. CONTRACT REVIEWS

Contractor shall cooperate with the State and provide reports as required under Section 2.5.7 of SECTION 2-A of the Master Contract. Upon approval by the State's Procurement Office, an

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individual State agency or CPV may make requests for similar reports and Contractor shall provide an equivalent report, specific to the purchases made by that agency or CPV.

62. OFFSHORE PERFORMANCE OF WORK PROHIBITED

Any services that are described in the specifications or scope of work that directly serve the State or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

62. Limitation of Liability

UNDER NO CIRCUMSTANCES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL CONTRACTOR, ITS AFFILIATES, OR ANY OF THEIR PERSONNEL EVER BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, MARKET, PROFITS, REVENUES, SAVINGS OR GOODWILL) EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE OTHERWISE FORESEEABLE AND REGARDLESS OF THE THEORY OF LIABILITY. WITH THE EXCEPTION OF (1) AN OBLIGATION TO INDEMNIFY THE STATE; (2) A BREACH OF THE MINNESOTA GOVERNMENT DATA PRACTICES ACT; OR (3) ANY OTHER BREACH OF CONTRACT RESULTING IN THE LOSS OF CONFIDENTIAL OR OTHERWISE PROTECTED STATE DATA, THE MAXIMUM LIABILITY OF CONTRACTOR, ITS AFFILIATES AND ANY OF THEIR PERSONNEL HEREUNDER, ARISING FROM ANY THEORY OF LIABILITY, WILL BE THREE TIMES THE TOTAL AMOUNT PAID TO CONTRACTOR FOR THE SPECIFIC SALES OFFERING GIVING RISE TO THE CLAIM

63. Disclaimed Warranties

EXCEPT AS SET FORTH HEREIN, AND SUBJECT TO APPLICABLE LAW, CONTRACTOR MAKES NO OTHER AND EXPRESSLY DISCLAIMS ALL OTHER CONDITIONS, COVENANTS, REPRESENTATIONS AND WARRANTIES OF EVERY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OR REPRESENTATIONS RELATED TO ACCURACY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT, ARISING BY LAW, BY REASON OF CUSTOM, FROM USAGE IN THE TRADE, OR FROM COURSE OF PRIOR DEALING. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION OR ADVICE GIVEN BY SELLER OR SELLER'S AFFILIATE OR PERSONNEL SHALL NOT BE DEEMED TO CREATE OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES SET FORTH HEREIN AND THAT CUSTOMER SHALL NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

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GENERAL INSURANCE REQUIREMENTS

The Contractor/Contract Vendor (Contract Vendor) shall maintain insurance to cover claims which may arise from operations under this Contract,

The Contract Vendor shall not commence work under the Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. The Contract Vendor shall maintain such insurance in force and effect throughout the term of the Contract.

All coverages and limits shall remain in force and effect throughout the term of the Contract.

NOTICE TO THE CONTRACT VENDOR:

The failure of the State of Minnesota to obtain a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the Contract Vendor to provide such insurance.

The Owner reserves the right to immediately terminate the Contract if the Contract Vendor is not in compliance with the insurance requirements and the Owner retains all rights to pursue any legal remedies against the Contract Vendor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

NOTICE TO INSURER:

The Contract Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

REQUIREMENTS FOR THE CONTRACT VENDOR:

The Contract Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contract Vendor's performance under this Contract.

If Contract Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Contract Vendor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contract Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota.

The Contract Vendor is responsible for payment of Contract related insurance premiums and deductibles.

If the Contract Vendor is self-insured, a Certificate of Self-Insurance must be attached.

Insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the MN Department of Commerce if they are not rated by AM Best.

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The Contract Vendor's Umbrella or Excess Liability insurance policy may be used to supplement the Contract Vendor's policy limits to satisfy the full policy limits required by the Contract.

POLICY REQUIREMENTS:

1. Workers' Compensation Insurance:

Statutory Compensation Coverage. Except as provided below, Contract Vendor must provide Workers' Compensation insurance for all its employees and in case any work is subcontracted, Contract Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Minimum limits of liability:

Coverage B – Employer's Liability

\$100,000 Bodily Injury by Disease per Employee

\$500,000 Bodily Injury by Disease Aggregate

\$100,000 Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts the Contract Vendor from Workers' Compensation insurance or if the Contract Vendor has no employees in the State of Minnesota, the Contract Vendor must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excludes the Contract Vendor from MN Workers' Compensation requirements.

If during the course of the Contract the Contract Vendor becomes eligible for Workers' Compensation, the Contract Vendor must comply with the Workers' Compensation Insurance requirements included herein and provide the State of Minnesota with a certificate of insurance.

Evidence of Subcontractor insurance shall be filed with the Contract Vendor.

2. Automobile Liability Insurance:

The Contract Vendor shall maintain insurance to cover liability arising out of the ownership, operation, use or maintenance of all owned, hired and non-owned autos, and in case any work is subcontracted the Contract Vendor will require the subcontractor to maintain Automobile Liability insurance.

A. Minimum Limits of Liability:

\$2,000,000 - Per Occurrence – Bodily Injury and Property Damage Combined Single Limit

B. Coverages:

Owned Automobile

Non-owned Automobile

Hired Automobile

Evidence of Subcontractor insurance shall be filed with the Contract Vendor.

3. General Liability Insurance:

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The Contract Vendor shall 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 Contract Vendor or by a subcontractor or by anyone directly or indirectly employed by the Contract Vendor under the Contract.

A. Minimum Limits of Liability:

\$2,000,000 - Per Occurrence

\$2,000,000 - Annual Aggregate

\$2,000,000 - Annual Aggregate applying to Products/Completed Operations

B. Coverages

Premises and Operations Bodily Injury and Property Damage

Personal & Advertising Injury

Standard ISO Contractual Liability Extension for 'Insured Contracts', or equivalent

Products and Completed Operations

State of Minnesota included as an Additional Insured

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5. **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 the 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.

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NASPO VALUEPOINT Software Value-Added Reseller (SVAR)
 Awarded Price Model

As stated on the Updated SVAR Updated Scoring Summary.pdf document dated April 22, 2022, available on the NASPO VALUEPOINT website, Zones, LLC was awarded the below categories and pricing models.

This NASPO VALUEPONT Software Value Added Reseller (SVAR) Awarded Price Model includes the original award of Maximum Markup on Reseller's Invoiced Cost percentage plus 1.00% which is the amount of the Administrative Fees as described in Section 31 Administrative Fees.

- Category 1 General Maximum Markup
- Category 2 Microsoft Maximum Markup
- Category 3 Oracle Maximum Markup

Category 1 General Maximum Markup

PUBLISHERS		MAXIMUM MARKUP ON RESELLER'S INVOICED COST
Tier I Publishers (Key Itemized Publishers)		
1	ADOBE	1.60%
2	CA TECHNOLOGIES	1.45%
3	CISCO	2.00%
4	COMMVault	2.00%
5	IBM	2.00%
6	RED HAT	2.00%
7	SPLUNK	2.00%
8	TABLEAU	2.00%
9	VEEAM	2.00%
10	VMWARE	1.75%
Tier II Publishers (Other Itemized Publishers)		
11	AUTODESK	2.00%
12	BARRACUDA NETWORKS	1.45%
13	BMC SOFTWARE	1.40%
14	CHECK POINT SOFTWARE	2.00%
15	CHERWELL	1.45%
16	CITRIX	1.75%
17	CHATSWORTH PRODUCTS (CPI)	1.40%
18	CROWDSTRIKE	1.75%
19	DELL	1.75%
20	DELPHIX	1.75%

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21	DOCUSIGN	2.25%
22	DYNATRACE	1.50%
23	FORCEPOINT	1.50%
24	FORTINET	1.75%
25	GOOGLE	1.75%
26	INFORMATICA	1.75%
27	IVANTI	1.75%
28	KNOWBE4	1.75%
29	MCAFEE	2.00%
30	MICRO FOCUS	1.75%
31	MULESOFT	1.50%
32	NETMOTION	1.75%
33	OKTA	2.25%
34	OPENTEXT	1.75%
35	PROGRESS SOFTWARE	1.50%
36	PROOFPOINT	2.00%
37	QUEST SOFTWARE	1.75%
38	RAPID7	1.50%
39	RSA SECURITY	2.00%
40	SALESFORCE	1.45%
41	SAP	1.45%
42	SOLARWINDS	2.00%
43	SOPHOS	2.20%
44	SPILLMAN	1.25%
45	SYMANTEC	1.75%
46	TENABLE	2.00%
47	TREND MICRO	2.00%
48	VARONIS	2.00%
49	VERITAS	2.00%
50	ZOHO	1.75%
	Non-itemized Publishers	
51	All other publishers	2.50%
		HOURLY RATE
52	Reseller Services	
53	- Asset management	\$175.00
54	- Solutions architect	\$175.00
55	- Senior solutions architect	\$195.00
56	- Program engagement manager	\$195.00
57	- Project leader	\$195.00
58	- Project manager	\$175.00
59	- Senior project manager	\$195.00
60	All other in-scope reseller services	\$195.00

A	Average Tier I Publishers Markup/Discount:	1.88%
B	Average Tier II Publishers Markup/Discount:	1.76%
C	Non-itemized Publishers Markup/Discount	2.50%
D	Average Reseller Services Hourly Rate:	\$187.50

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Category 1 General Maximum Markup (Optional Services)

OPTIONAL SERVICES		MAXIMUM MARKUP ON RESELLER'S INVOICED COST
Optional Discount- and/or Markup-based Services		
1	Sr. Architect	5.75%
2	Enterprise Architect	5.75%
3	Program Manager	5.75%
4	Inside Project Manager	5.75%
5	All other In-scope publisher services	5.75%
		HOURLY RATE
Optional Fixed Rate-based Services		
6	Service Technician	\$80.00
7	Senior Service Technician	\$95.00
8	Services Supervisor	\$125.00
9	Service Engineer	\$190.00
10	Senior Service Engineer	\$195.00
11	Project Coordinator	\$95.00
12	Project Manager	\$175.00
13	Consultant Level I	\$195.00
14	Consultant Level II	\$100.00
15	Senior Consultant	\$175.00
16	Inside Solutions Architect	\$225.00
17	Solutions Architect	\$225.00
18	Specialty Services/Publisher	\$225.00

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Category 2 Microsoft Maximum Markup

SUBCATEGORY		MAXIMUM MARKUP ON RESELLER'S INVOICED COST (may be negative if sold at loss)
Itemized Microsoft Offerings		
1	EMS E5	1.25%
2	G1	1.25%
3	G2	1.25%
4	G3	1.25%
5	G5	1.25%
6	Govt E4	1.25%
7	Advanced Threat Protection	1.25%
8	Power BI	1.25%
9	Exchange Online	1.25%
10	Kiosk F3 Now	1.25%
11	Dynamics	1.25%
12	PowerApps	1.25%
13	Project Online	1.25%
14	Azure	1.25%
All Other Microsoft Offerings		
15	SaaS	1.25%
16	On-Premise	1.25%
Resold In-scope Professional Services		
17	- Ongoing maintenance & support services not included in software license agreement	4.00%
18	- Deployment services	4.00%
19	- Architectural design services	4.00%
20	- Training deployment services	4.00%
21	All other resold in-scope professional services	4.00%
		HOURLY RATE
In-scope Reseller Services		
22	- Asset management	\$175.00
23	- Solutions architect	\$175.00
24	- Senior solutions architect	\$195.00
25	- Program engagement manager	\$195.00
26	- Project leader	\$195.00
27	- Project manager	\$175.00
28	- Senior project manager	\$195.00
29	All other in-scope reseller services	\$195.00
A	Average Itemized Offerings Markup/Discount:	1.25%
B	Average Other Offerings Markup/Discount:	1.25%
C	Average Resold In-scope Professional Services Markup/Discount:	4.00%
D	Average In-scope Reseller Services Hourly Rate:	\$187.50

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Category 2 Microsoft Maximum Markup (Optional Services)	
OPTIONAL SERVICES	MAXIMUM MARKUP ON RESELLER'S INVOICED COST
Optional Discount- and/or Markup-based Services	
1	Implementation Services Consultant Level 1; MST-MIS-001
	Assists with the implementation of innovative and enterprise-scale solutions. Demonstrates technical expertise around Microsoft solutions.
	5.75%
2	Implementation Services Consultant Level 2; MST-MIS-002
	Implements innovative and enterprise-scale solutions. Demonstrates technical expertise around Microsoft architecture and solutions.
	5.75%
3	Implementation Services Consultant Level 3; MST-MIS-003
	Serves as an escalation point for both the customer and delivery teams. Focuses on solution status and realized value, removing risks and blockers, and strategic planning. Monitors key performance indicators to ensure a healthy implementation engagements.
	5.75%
4	Implementation Services Consultant Level 4; MST-MIS-004
	Manages or supports implementation of innovative and enterprise-scale solutions, demonstrating deep technical expertise and insights around Microsoft architecture and solutions. Engages with senior-level technical and business decision makers.
	5.75%
5	Implementation Services Consultant Level 5; MST-MIS-005
	Leads implementation of innovative and enterprise-scale solutions, demonstrating deep technical expertise and insights around Microsoft architecture and solutions. Engages with senior-level technical and business decision makers.
	5.75%
6	Implementation Services Consultant Level 6; MST-MIS-006
	Provides a deep understanding of infrastructure technologies, business drivers, emerging computing trends on implementation projects
	5.75%
HOURLY RATE	
Optional Fixed Rate-based Services	
6	Windows Server on Azure
	\$195.00
7	Security & Management
	\$195.00
8	Office 365 Migration Assistance (Mail, Teams, Sharepoint, OneDrive)
	\$195.00
9	SAP on Azure
	\$225.00
10	Linux on Azure
	\$225.00
11	Datacenter Migration
	\$225.00
12	Cloud Scale Analytics
	\$200.00
13	Field Deployment Service
	\$225.00

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Category 3 Oracle Maximum Markup

SUBCATEGORY		MAXIMUM MARKUP ON RESELLER'S INVOICED COST
Oracle Offerings		
1	SaaS	2.20%
2	On-Premise	2.20%
Resold In-scope Professional Services		
3	- Ongoing maintenance & support services not included in software license agreement	2.20%
4	- Deployment services	2.20%
5	- Architectural design services	2.20%
6	- Training deployment services	2.20%
7	All other resold in-scope professional services	2.20%
		HOURLY RATE
In-scope Reseller Services		
8	- Asset management	\$175.00
9	- Solutions architect	\$175.00
10	- Senior solutions architect	\$195.00
11	- Program engagement manager	\$195.00
12	- Project leader	\$195.00
13	- Project manager	\$175.00
14	- Senior project manager	\$195.00
15	All other in-scope reseller services	\$195.00
A	Average Offerings Markup/Discount:	2.20%
B	Average Resold In-scope Professional Services Markup/Discount:	2.20%
C	Average In-scope Reseller Services Hourly Rate:	\$187.50

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Category 3 Oracle Maximum Markup (Optional Services)

OPTIONAL SERVICES		MAXIMUM MARKUP ON RESELLER'S INVOICED COST
Optional Discount- and/or Markup-based Services		
1	Time and Materials Services: Advanced Support Engineer	5.50%
2	Time and Materials Services: Technical Account Manager	5.50%
3	Sr. Architect	5.50%
4	Enterprise Architect	5.50%
5	Program Manager	5.50%
6	Inside Project Manager	5.50%
7	All other in-scope Oracle Services	5.50%
		HOURLY RATE
Optional Fixed Rate-based Services		
6	Enterprise Resource Management health checks	\$200.00
7	Oracle Hardware configuration, design, and performance	\$250.00
8	Engineered systems Proof of Concept	\$250.00
9	Project Management, service delivery, and application integration	\$195.00
10	Database design and administration	\$275.00
11	Hardware implementation, performance, capacity	\$250.00