



# State of Minnesota Professional and Technical Services Master Contract

SWIFT Contract Number: 214048

Master Contract T-Number: 2322A

This Professional and Technical Services Master Contract ("Master Contract") is between the State of Minnesota, acting through its Commissioner of the Department of Employment and Economic Development ("State") and City of Duluth Workforce Development whose designated business address is 402 W. 1st Street, Duluth, MN 55802 ("Contractor"). State and Contractor may be referred to jointly as "Parties."

## Recitals

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1. Under Minnesota Statute § 268A.03(2), and Minnesota Rules 3300.5060, the State is empowered to provide vocational rehabilitation services to persons with disabilities in accordance with the federal Rehabilitation Act of 1973, Public Law 93-112, as amended, and persons with a disability are entitled to informed choice of vendor;
2. Under Minnesota Statute § 268A.03(10), the State is empowered to enter into contractual arrangements with instrumentalities of federal, state, or local government and with private individuals, organizations, agencies, or facilities with respect to providing vocational rehabilitation or independent living services;
3. The State issued a solicitation identified as Vocational Rehabilitation Program Community Partners on April 18, 2022, for the ongoing recruitment of contracted service providers to partner with Vocational Rehabilitation Services ("VRS") in providing professional and technical contract services. ("Solicitation");
4. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the services requested in the Solicitation; and
5. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

## Master Contract

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### 1. Term of Master Contract

- 1.1 Effective date. July 1, 2022, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not accept work under this Master Contract until this Master Contract is fully executed and the Contractor has been notified by the State's Authorized Representative that it may begin accepting work authorizations ("Work Authorizations").
- 1.2 Work Authorizations. The term of work under Work Authorizations issued under this Master Contract may not extend beyond the expiration date of this Master Contract.
- 1.3 Expiration date. June 30, 2024, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

### 2. Contractor's Duties

- 2.1 The Contractor, who is not a State employee, shall perform all duties described in this Master Contract to the satisfaction of the State.
- 2.2 The Contractor may be requested to perform any of the services identified in Exhibit D when requested under a Work Authorization. A description of the required work will be furnished in each Work Authorization with the complete detailed description of service definitions, service requirements, reporting requirements, and invoicing requirements found in the VRS Community Partner Guide (Community Partner Guide) at [mn.gov/deed/job-seekers/disabilities/partners/guide/contracted-services](https://mn.gov/deed/job-seekers/disabilities/partners/guide/contracted-services).
- 2.3 The Contractor understands that only the receipt of a fully executed Work Authorization authorizes the Contractor to begin work under this Master Contract. Any and all effort, expenses, or actions taken before the Work Authorization is fully executed is not authorized under Minnesota Statutes and is undertaken at the sole responsibility and expense of the Contractor.
- 2.4 The Contractor understands that this Master Contract is not a guarantee of a Work Authorization or any number of Work Authorizations. The State has determined that it may have need for the services under this Master Contract but does not commit to spending any money with the Contractor.

### 3. Representations and Warranties

- 3.1 Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law, the State is empowered to engage such assistance as deemed necessary.
- 3.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Master Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Master Contract, to the satisfaction of the State.

- 3.3 Contractor warrants that it possesses the legal authority to enter into this Master Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Master Contract, or any part thereof, and to bind Contractor to its terms.

#### 4. Time

The Contractor must comply with all the time requirements described in this Master Contract and as described in the Community Partner Guide. In the performance of this Master Contract, time is of the essence.

#### 5. Consideration and Payment

- 5.1 **Consideration.** The State will pay for all services satisfactorily performed by the Contractor for all Work Authorizations issued under this Master Contract.

5.1.1 *Total obligation.* The total obligation of the State for all compensation and reimbursements to the Contractor under this Master Contract will not exceed \$300,000.

5.1.2 *Compensation.* The Contractor may be requested to perform any of the services identified in Exhibit D under a fully executed Work Authorization issued under this Master Contract. The Contractor will be compensated in accordance with the rates and units listed in Exhibit D.

5.1.3 *Rates for Services.* Contractor shall ensure costs used to determine rates for services are necessary, reasonable, and allowable in nature and amount. Costs must not exceed that which would be incurred by a prudent person under the same circumstances. Contractor shall ensure costs used to determine rates for services are allocable and assignable to VRS and the costs will be incurred for the exclusive benefit of persons referred by the State. The Contractor shall charge the State no higher fee than the Contractor charges other purchasers of services. Costs shall be adequately documented. Costs shall be subject to State monitoring, audit, and reconciliation.

5.1.4 *Work Authorizations.* When the Contractor accepts a Work Authorization to provide services, the Work Authorization will specify the service, the rate as listed in Exhibit D, the number of units authorized, and the time period in which services must be provided.

#### 5.2 Payment.

##### 5.2.1 Invoices.

5.2.1.1 The Contractor may invoice only for the service specified in the Work Authorization, the number of units specified in the Work Authorization, at the rate specified in Exhibit D and reflected on the Work Authorization, and only for services performed in the time period specified in the Work Authorization.

5.2.1.2 Invoice requirements are outlined in Section 5, Consideration and Payment, of this Master Contract or in the Community Partner Guide ([mn.gov/deed/job-seekers/disabilities/partners/guide/contracted-services/billing](https://mn.gov/deed/job-seekers/disabilities/partners/guide/contracted-services/billing)).

5.2.1.3 The following constitutes an “undisputed invoice” that is ready for payment.

- 5.2.1.3.1 The Contractor presents an itemized invoice for the services actually performed with required elements of the invoice as detailed in the Community Partner Guide ([mn.gov/deed/job-seekers/disabilities/partners/guide/contracted-services](https://mn.gov/deed/job-seekers/disabilities/partners/guide/contracted-services));
- 5.2.1.3.2 The Contractor presents required documentation as detailed in the Community Partner Guide ([mn.gov/deed/job-seekers/disabilities/partners/guide/contracted-services](https://mn.gov/deed/job-seekers/disabilities/partners/guide/contracted-services)); and
- 5.2.1.3.3 The State's Authorized Direct Service Staff Representative accepts the services as satisfactory, the invoice as satisfactory, and the required documentation as satisfactory.

5.2.1.4 The Contractor must submit an undisputed invoice within 90 days from the end date of the Work Authorization.

5.2.2 *Conditions of Payment.* All services delivered by the Contractor under a Work Authorization 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 including business registration requirements of the Office of the Secretary of State. 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.

5.2.3 *Services Actually Performed.* The payment for each Work Authorization will only be made for services actually performed that have been accepted by the State, and meet all terms, conditions, and specifications of the Master Contract and the Work Authorization.

5.2.4 *Prompt Payment.* The State will pay the Contractor pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice. Terms requesting payment in less than 30 days will be changed to read “Net 30 days.” Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.

5.2.5 *Retainage.* Under Minn. Stat. § 16C.08, subd. 2 (10), no more than 90 percent of the amount due under any Work Authorization may be paid until the final product of the Work Authorization has been reviewed by the State. The balance due will be paid when the State determines that the Contractor has satisfactorily fulfilled all the terms of the Work Authorization.

5.2.6 *Federal funds.* Payments under this Master Contract will be made from federal funds obtained by the State through Title 1 Catalog of Federal Domestic Assistance Number 84.126 of the Rehabilitation Act of 1973. 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.

## 6. Authorized Representative


- 6.1 ***State's Authorized Representative.*** The State's Authorized Representative is Kim Babine, DEED-VRS Director of Community Partnerships, or their successor or delegate, at the following business address and telephone number: 332 Minnesota Street – Suite 200, St. Paul, MN 55101, 651-259-7349, and has the responsibility to monitor the Contractor's performance. The State may change its address for delivery by providing written notice via email to the Contractor's Authorized Representative.
- 6.2 ***Contractor's Authorized Representative.*** The Contractor's Authorized Representative is Elena Foshay, Director, or their successor or delegate, at the following business address and telephone number: 402 W. 1st Street, Duluth, MN 55802, and (218) 730-5241. If the Contractor's Authorized Representative changes at any time during this Master Contract, the Contractor must immediately notify the State.

## 7. Exhibits

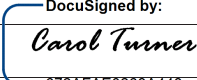
The following Exhibits are attached and incorporated into this Master Contract. In the event of a conflict between the terms of this Master Contract and its Exhibits, or between Exhibits, the order of precedence is first the Master Contract, and then in the following order:

- Exhibit A: Master Contract Terms
- Exhibit A, Supplement 1: IT Terms
- Exhibit B: Insurance Requirements
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Fee-for-Service Rate Schedule
- Exhibit E: Contract Provisions Outlined in Appendix II to Part 2 Code of Federal Regulations 200

1. State Encumbrance Verification\*  
*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05*

Print name: Ka Vue  
Signature:  Digitally signed by Ka Vue  
Date: 2022.06.17 13:05:39  
+09'00'  
Title: MA1 Date: 6/17/22  
SWIFT Contract No.: 214048 PR 68615  
\*Encumbrances on case by case basis in WF1

2. Contractor  
*The Contractor certifies that the appropriate person(s) have executed the Master Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.*

Print name: Carol Turner  
Signature:  DocuSigned by:  
Carol Turner  
672AFAE0268A448...  
Title: Acting Director Date: 6-22-22

3. State Agency  
*With delegated authority*

Print name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

4. Commissioner of Administration  
*As delegated to The Office of State Procurement*

Print name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

## Exhibit A: Master Contract Terms

### 1. Prompt Payment.

- 1.1 The State will pay the Contractor pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice, or merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read “Net 30 days.” Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.
- 1.2 The payment for each Work Authorization will only be made for services *actually* performed that have been accepted by the ordering entity, and meet all terms, conditions, and specifications of the Master Contract and the Work Authorization.

### 2. Assignment, Amendments, Waiver, and Contract Complete.

- 2.1 *Assignment.* The Contractor may neither assign nor transfer any rights or obligations under this Master Contract or any Work Authorization without the prior consent of the State and a fully executed assignment agreement, executed, and approved by the authorized parties or their successors.
- 2.2 *Amendments.* Any amendment to this Master Contract or any Work Authorization must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.
- 2.3 *Waiver.* If the State fails to enforce any provision of this Master Contract or any Work Authorization, that failure does not waive the provision or its right to enforce it.
- 2.4 *Contract Complete.* This Master Contract and any Work Authorization contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Master Contract, whether written or oral, may be used to bind either party.

### 3. Termination.

- 3.1 *Termination for Convenience.* The State or Commissioner of Administration may cancel this Master Contract and any Work Authorization at any time, with or without cause, upon 30 days’ written notice to the Contractor. Upon termination for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services or goods satisfactorily performed or delivered.
- 3.2 *Termination for Breach.* The State may terminate this Master Contract and any Work Authorization, with cause, upon 30 days’ written notice to Contractor of the alleged breach and opportunity to cure. If after 30 days, the alleged breach has not been remedied, the State may immediately terminate the Master Contract.
- 3.3 *Termination for Insufficient Funding.* The State may immediately terminate this Master Contract and any Work Authorization 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 addressed within this Master Contract. Termination must be by written 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 dedicated funds are available. The State will not be assessed

any penalty if the Master 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. This notice will be provided within a reasonable time of the State's receiving notice.

#### **4. Force Majeure.**

Neither party shall be responsible to the other or considered in default of its obligations within this Master Contract and any Work Authorization to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

#### **5. Indemnification.**

5.1 In the performance of this Master Contract and any Work Authorization, the Indemnifying Party must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Indemnifying Party's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

5.2 The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Master Contract.

5.3 Nothing within this Master Contract and any Work Authorization, 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 Indemnifying Party. This shall extend to all agreements related to the subject matter of this Master Contract, and to all terms subsequently added, without regard to order of precedence.

#### **6. Governing Law, Jurisdiction, and Venue.**

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

#### **7. Subcontracting and Subcontract Payment.**

7.1 *Subcontracting Allowed.* A subcontractor is a person or company that has been awarded a portion of the Master Contract or any Work Authorization by Contractor. Only subcontractors that have been approved by the State's Authorized Representative can be used for this Master Contract.

7.1.1 After the effective date of the Master Contract or any Work Authorization, the Contractor shall not, without prior written approval of the State's Authorized Representative, subcontract for the performance of any of the Contractor's obligations that were not already approved for subcontracting when the Master Contract or Work Authorization was awarded. During this Master Contract or any Work Authorization, if an approved subcontractor is determined to be performing unsatisfactorily by the State's Authorized Representative, the Contractor will receive written notification that the subcontractor can no longer be used for this Master Contract or any Work Authorization.

7.1.2 The provisions of the Master Contract and any Work Authorization shall apply with equal force and effect to all approved subcontractors engaged by the Contractor. Notwithstanding approval by the State, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performances of the obligations contemplated by the Master Contract and any Work Authorization.

7.2 *Subcontractor Payment.* Contractor must pay any subcontractor in accordance with Minn. Stat. § 16A.1245.

## 8. 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 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.

## 9. 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 Master Contract and any Work Authorization, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Master Contract and any Work Authorization. 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 and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

## 10. Intellectual Property Rights.

10.1 *Definitions.* For the purpose of this Section, the following words and phrases have the assigned definitions:

10.1.1 "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 Master Contract and any Work Authorization.

10.1.2 “Pre-Existing Intellectual Property” means intellectual property developed prior to or outside the scope of this Master Contract and any Work Authorization, and any derivatives of that intellectual property.

10.1.3 “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 Master Contract and any Work Authorization. “Works” includes Documents.

10.2 *Ownership.* 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 Master Contract and any Work Authorization. The Documents shall 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 Master Contract and any Work Authorization. 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.

10.3 *Pre-existing Intellectual Property.* Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor’s Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Master Contract and any Work Authorization.

#### 10.4 *Obligations.*

10.4.1 *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 Master Contract and any Work Authorization, the Contractor will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the State’s Authorized Representative with complete information and/or disclosure thereon.

10.4.2 *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.

10.4.3 *Indemnification.* Notwithstanding any other indemnification obligations addressed within this Master Contract and any Work Authorization, 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 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. Copyright.**

The Contractor shall 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 compositions, secret process, patented or non-patented invention, article or appliance furnished or used in the performance of the Master Contract and any Work Authorization.

#### **12. Contractor's Documents.**

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Master Contract or any Work Authorization whenever the Master Contract or any Work Authorization is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Master Contract or any Work Authorization or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Master Contract and any Work Authorization or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability applicable to this Master Contract and any Work Authorization or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

#### **13. State Audits.**

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

#### **14. Diverse Spend Reporting.**

If the total value of the Work Authorization may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Work Authorization, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from the Work Authorization compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Master Contract is in effect.

**15. Publicity and Endorsement.**

**15.1 *Publicity.*** Any publicity regarding the subject matter of this Master Contract and any Work Authorization 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, information posted on corporate or other websites, 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 Master Contract.

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

**16. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions.**

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Master Contract award was based. Contractor 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.

**17. Federal Funds.**

**17.1 *Compliance with Federal Requirements.*** Federal money will be used or may potentially be used to pay for all or part of the goods, construction, or services under the Master Contract. The Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

**17.2 *Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.*** Federal money will be used or may potentially be used to pay for all or part of the work under the Master Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility, and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Master Contract award was based.

**18. Contingency Fees Prohibited.**

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

**19. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).**

If the value of this Master Contract, 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.

## 20. Non-discrimination (in accordance with Minn. Stat. § 181.59).

The Contractor will comply with the provisions of Minn. Stat. § 181.59.

## 21. E-Verify Certification (in accordance with Minn. Stat. § 16C.075).

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor 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. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

## 22. Affirmative Action Requirements

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

22.1 *Covered Contracts and Contractors.* If the Master 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 principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.

22.2 *General.* Minn. R. 5000.3400-5000.3600 implements 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, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

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

22.3.1 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.

22.3.2 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.

22.3.3 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.

22.3.4 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. 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.

22.3.5 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 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.

22.4 *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 Master Contract and any Work Authorization by the Commissioner or the State.

22.5 *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.

## **23. Equal Pay Certification.**

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Master Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Master Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

## **24. Survival of Terms.**

The following clauses survive the expiration or cancellation of this Master Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Master Contract term that expressly states or by its nature shall survive, shall survive.

## **25. IT Accessibility Standard.**

Contractor acknowledges and is fully aware that the State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

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. As upgrades are made to the software, products, or subscriptions available through this Master Contract and any Work

Authorization, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Master Contract and any Work Authorization, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. Contractor warrants that its Products comply with the above-mentioned accessibility Standards and agrees to indemnify, defend, and hold harmless the State against any claims related to non-compliance of Contractor's Product with the above-mentioned accessibility Standards. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

## **26. Nonvisual Access Standards.**

Pursuant to Minn. Stat. § 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- 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;
- 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;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- 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; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.

These standards do not require the 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.

## **27. Pre-Employment Transition Services Terms and Conditions**

27.1 The Contractor is prohibited from paying a subminimum wage (as defined by Section 14(c) of the Fair Labor Standards Act under the U.S. Department of Labor) to students receiving Pre-Employment Transition Services ("Pre-ETS").

27.2 After completion or termination of the Master Contract, Contractor remains obligated to comply with all continuing legal and contractual obligations, duties and responsibilities including but not limited to obligations related to state and federal reporting and recipient grievances and appeals.

27.3 Nothing in this agreement is to be construed as reducing the obligation of the Local Educational Agency, as defined by the Individuals with Disabilities Education Act ("IDEA") to provide or pay for transition

services under IDEA that are also considered special education or related services and that are necessary for ensuring a free appropriate public education to children with disabilities.

## **Exhibit A, Supplement 1**

### **IT TERMS**

#### **1. Security and Data Protection.**

- 1.1 Contractor is responsible for the security and protection of State data subject to and related to Cloud Services in this Master Contract and any Work Authorization. The terms, conditions, and provisions of this Security and Data Protection section take precedence and will prevail over any other terms, conditions, and provisions of the Master Contract and any Work Authorization, if in conflict. This Security and Data Protection section, including its sub-sections, survives the completion, termination, expiration, or cancellation of the Master Contract and any Work Authorization.
- 1.2 For the purposes of this Security and Data Protection section, the following terms have the following meanings:
  - 1.2.1 "Cloud Services" includes "cloud computing" as defined by the U.S. Department of Commerce, NIST Special Publication 800-145 (currently available online at: <http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf>) and any other software, hardware, hosting service, subscription, or other service or product by which Contractor stores, transmits, processes or otherwise has access to State data.
  - 1.2.2 "State" means the State, or a cooperative purchasing venture ("CPV") member when the CPV member is the ordering entity (if CPV purchases are permitted under this Master Contract and any Work Authorization).
  - 1.2.3 "Data" has the meaning of "government data" in Minn. Stat. § 13.02, subd. 7.
  - 1.2.4 "Not public data" has the meaning in Minn. Stat. § 13.02, subd. 8a.
  - 1.2.5 "Security incident" means any actual, successful or suspected: (1) improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, modification of, alteration to, loss of, damage to or destruction of State data; (2) interference with an information system; (3) disruption of or to Contractor's service(s); or (4) any similar or related incident.
  - 1.2.6 "Privacy incident" means violation of the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13); violation of federal data disclosure or privacy requirements in federal laws, rules and regulations; or breach of a contractual obligation to protect State data. This includes, but is not limited to, improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, damage to, loss of, modification of, alteration to or destruction of State data protected by such State or federal laws or by contract.

#### **2. Data Ownership.**

- 2.1 The State solely and exclusively owns and retains all right, title and interest, whether express or implied, in and to any and all State data. Contractor has no and acquires no right, title or interest, whether express or implied, in and to State data.
- 2.2 Contractor will only use State data for the purposes set forth in the Master Contract and any Work Authorization. Contractor will only access State data as necessary for performance of this Master

Contract and any Work Authorization. Contractor will not access State user accounts except to respond to service or technical problems or at the State's specific request.

- 2.3 All State data, including copies, summaries and derivative works thereof, must be remitted, in a mutually agreeable format and media, to the State by the Contractor upon request or upon completion, termination or cancellation of the Master Contract and any Work Authorization. The foregoing sentence does not apply if the State Chief Information Security Officer or delegate authorizes in writing the Contractor to sanitize or destroy the data and the Contractor certifies in writing the sanitization or destruction of the data. Within ninety days following any remittance of State data to the State, Contractor shall, unless otherwise instructed by the State in writing, sanitize or destroy any remaining data and certify in writing that the sanitization or destruction of the data has occurred. Any such remittance, sanitization or destruction will be at the Contractor's sole cost and expense.
- 2.4 In the event Contractor receives a request to release any State data, Contractor must immediately notify the State's data practices compliance official. The State will give Contractor instructions concerning the release of the data to the requesting party before the data is released. Contractor must comply with the State's instructions. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data by Contractor.

### **3. Notification of Incidents.**

If Contractor becomes aware of or has reasonable suspicion of a privacy incident or security incident regarding any State data, Contractor must report such incident to the State and the State Chief Information Security Officer as soon as possible, but no later than twenty-four (24) hours after such incident. The decision to notify the affected data subjects and the form of such notice following report of a privacy incident or security incident are the responsibility of the State. Notwithstanding anything to the contrary in this Master Contract and any Work Authorization, Contractor will indemnify, hold harmless and defend the State and its officers, and employees for and against any claims, damages, costs and expenses related to any privacy incident or security incident involving any State data. For purposes of clarification, the foregoing sentence shall in no way limit or diminish Contractor's obligation(s) to indemnify, save, hold harmless, or defend the State under any other term of this Master Contract and any Work Authorization. Contractor will reasonably mitigate any harmful effects resulting from any privacy incident or security incident involving any State data.

### **4. Security Program.**

- 4.1 Contractor will make best efforts to protect and secure the State data related to this Master Contract and any Work Authorization. Contractor will establish and maintain an Information Security Program ("Program") that includes an information security policy applicable to any and all Cloud Services ("Policy"). Contractor's Program and Policy must align with appropriate industry security frameworks and standards such as National Institute of Standards and Technology ("NIST") 800-53 Special Publication Revision 4, Federal Information Processing Standards ("FIPS") 199, Federal Risk and Authorization Management Program ("FedRamp"), or Control Objectives for Information and Related Technology ("COBIT").
- 4.2 Upon the State's request, Contractor will make its Policy available to the State on a confidential, need-to-know basis, along with other related information reasonably requested by the State regarding Contractor's security practices and policies. Unless inconsistent with applicable laws, Contractor and the State must treat the Policy and related information on security practices and policies that are specific to the State as confidential information and as not public data pursuant to Minn. Stat. § 13.37.

## **5. Data Management.**

Contractor will not use State data, including production data, for testing or development purposes unless authorized in writing by the State Chief Information Security Officer or delegate. Contractor will implement and maintain procedures to physically and logically segregate State data, unless otherwise explicitly authorized by the State Chief Information Security Officer or delegate.

## **6. Data Encryption.**

Contractor must encrypt all State data at rest and in transit, in compliance with FIPS Publication 140-2 or applicable law, regulation or rule, whichever is a higher standard. All encryption keys must be unique to State data. Contractor will secure and protect all encryption keys to State data. Encryption keys to State data will only be accessed by Contractor as necessary for performance of this Master Contract and any Work Authorization.

## **7. Data Storage.**

Contractor warrants that any and all State data will be stored, processed, and maintained solely on designated servers and that no such data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes.

## **8. Data Center and Monitoring/Support Locations.**

During the term of the Master Contract and any Work Authorization, Contractor will: (1) locate all production and disaster recovery data centers that store, process or transmit State data only in the continental United States, (2) store, process and transmit State data only in the continental United States, and (3) locate all monitoring and support of all Cloud Services only in the continental United States. The State has the right to on-site visits and reasonable inspection of the data centers upon notice to Contractor of seven calendar days prior to visit.

## **9. Security Audits & Remediation.**

- 9.1 Contractor will audit the security of the systems and processes used to provide any and all Cloud Services, including those of the data centers used by Contractor to provide any and all Cloud Services to the State. This security audit: (1) will be performed at least once every calendar year beginning with 2016; (2) will be performed according Statement on Standards for Attestation Engagements ("SSAE") 16 Service Organization Control ("SOC") 2, International Organization for Standardization ("ISO") 27001, or FedRAMP; (3) will be performed by third party security professionals at Contractor's election and expense; (4) will result in the generation of an audit report ("Contractor Audit Report"), which will, to the extent permitted by applicable law, be deemed confidential information and as not public data under the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13); and (5) may be performed for other purposes in addition to satisfying this section.
- 9.2 Upon the State's reasonable, advance written request, Contractor will provide to the State a copy of the Contractor Audit Report.
- 9.3 Contractor will make best efforts to remediate any control deficiencies identified in the Contractor Audit Report in a commercially reasonable timeframe.
- 9.4 If the State becomes aware of any other Contractor controls that do not substantially meet the State's requirements, the State may request remediation from Contractor. Contractor will make best efforts to

remediate any control deficiencies identified by the State or known by Contractor, in a commercially reasonable timeframe.

## **10. Insurance and Liability.**

- 10.1 Contractor warrants that it has and will maintain the insurance described below in force and effect throughout the term of the Master Contract and any Work Authorization. An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Master Contract and any Work Authorization provided that Contractor warrants that the minimum coverage requirements below are met.
- 10.2 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):
- 10.3 This policy must provide coverage for all claims Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to the Master Contract and any Work Authorization, including but not limited to claims which may arise from failure of Contractor's or a subcontractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of confidential or private information, transmission of a computer virus or denial of service.
- 10.4 Contractor is required to carry the following minimum limits:
- \$2,000,000 – per claim or event
  - \$2,000,000 – annual aggregate
- 10.5 Any deductible will be the sole responsibility of the Contractor and, unless Contractor maintains an audited net worth of at least \$100 million, the deductible may not exceed \$100,000 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 the Master Contract. Contractor shall maintain such insurance for a period of at least three (3) years following expiration or termination of the Master Contract. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.
- 10.6 Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor's performance under this Master Contract and any Work Authorization. If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor will notify the State within five (5) business days with a copy of the cancellation notice, unless Contractor'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. Contractor is responsible for payment of Master Contract and any Work Authorization related insurance premiums and deductibles. If Contractor is self-insured, a Certificate of Self-Insurance must be provided to the State. Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category ("FSC") VII or better, and authorized to do business in the State. 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. The State reserves the right to

immediately terminate the Master Contract and any Work Authorization if the Contractor is not in compliance with the insurance requirements of this sub-section and retains all rights to pursue any legal remedies against the Contractor.

10.7 Notwithstanding any limitation of liabilities in the Master Contract and any Work Authorization, the Contractor shall be liable for all damages to the extent such damages are within the insurance limit.

#### **11. Subcontractors and Third Parties.**

Contractor warrants that no State data will be transmitted, exchanged or otherwise provided to other parties except as specifically agreed to in writing by the State Chief Information Security Officer or delegate. Contractor must ensure that any contractors, subcontractors, agents and others to whom it provides State data, agree in writing to be bound by the same restrictions and conditions under this Master Contract and any Work Authorization that apply to Contractor with respect to such data.

#### **12. Compliance with Data Privacy and Security Laws and Standards.**

Contractor shall comply with all applicable State and federal data privacy and data security laws, rules, and regulations.

#### **13. Remedies.**

Contractor acknowledges that the State, because of the unique nature of its data, would suffer irreparable harm in the event that Contractor breaches its obligation under this Security and Data Protection section, and monetary damages may not adequately compensate the State for such a breach. In such circumstances, the State will be entitled, in addition to monetary relief, to injunctive relief or specific performance as may be necessary to restrain any continuing or further breach by Contractor, without showing or proving any actual damages sustained by the State.

#### **14. Business Continuity.**

14.1 Contractor shall have written business continuity and disaster recovery plans that define the roles, responsibilities, and procedures necessary to ensure that Cloud Services provided under this Master Contract and any Work Authorization shall be maintained continuously in the event of a disruption to the Contractor's operations, regardless of the cause of the disruption. Such plans must, at a minimum, define the Contractor's actions to address the impacts of the following key areas likely to cause a disruption to Contractor's operations: loss of key personnel, loss of facility, and loss of information technology. Contractor must conduct testing and review of its business continuity and disaster recovery plan at least annually. Upon State request, Contractor must also participate, at mutually agreed upon times, in State business continuity and disaster recovery testing, training, and exercise activities.

14.2 Any term or condition that allows the Contractor to terminate the Master Contract and any Work Authorization for any or no reason (i.e., termination for convenience) is null and void. In the event of termination or cancellation of this Master Contract for any reason, the Contractor shall continue to provide any then-existing Cloud Services for as long as the State needs to transfer its data, software and other assets to an alternate service or service provider. After any such termination or cancellation, the State may purchase the continuing Cloud Services at the pricing in effect prior to such termination or cancellation. The fee for any such purchase shall be prorated for the period of time needed, as determined by the State, and shall be reduced by the amount paid for Cloud Services that were not used

prior to such termination or cancellation. The amount of any such fee reduction shall be determined on a pro-rata basis. The Contractor shall refund to the State any unused portion of payments for Cloud Services.

## **15. Background Checks.**

- 15.1 Contractor represents that it has conducted and will conduct background investigations into all of Contractor's agents, employees, and subcontractors that will provide Cloud Services to the State. Such background investigations must have been or will be conducted by investigating local, state and federal criminal records, local, state and federal civil case records, and employment references.
- 15.2 If any provision of this sub-section is found to violate any applicable laws, rules, or State policies, then the Contractor will be relieved of all obligations arising under such provision. Notwithstanding anything to the contrary in this sub-section, this sub-section is only applicable and effective to extent that it is consistent with applicable laws, rules, and State policies.

## **16. Secure Coding.**

Contractor warrants that all Cloud Services are free from any and all defects in materials, workmanship, and design. Contractor warrants that all Cloud Services are free from any and all viruses, malware, and other harmful or malicious code. Contractor must scan all source code for vulnerabilities, including before and after any source code changes are made and again before being placed into production, and must promptly remediate any and all vulnerabilities. Contractor must follow best practices for application code review and the most current version of the OWASP top 10.

## **17. Compliance with Data Privacy and Security Laws and Standards.**

- 17.1 Contractor must comply with all requirements, restrictions, and conditions that apply to the Office of MN.IT Services in the July 1, 2015, Amended MNSure Data Sharing Contract, currently available at <https://www.mnsure.org/images/MNIT-MNSure-data-sharing-Contract-2015-07.pdf>, and as amended. This document, as amended, is fully incorporated herein.
- 17.2 Contractor shall comply with the Health Insurance Portability Accountability Act ("HIPAA"), the HITECH Act, and other similar privacy laws. Contractor also shall comply with the HIPAA Privacy Rule, HIPAA Security Rule, and other similar rules, regulations, and laws, including future amendments thereto.
- 17.3 Contractor shall comply with all applicable requirements, restrictions, and conditions set forth in the Criminal Justice Information Services ("CJIS") – Security Policy, Version 5.3, dated 8/4/2014, including, but not limited to, conducting FBI fingerprint background checks on all of Contractor's agents, employees, and subcontractors that have or will have access to Criminal Justice Information ("CJI").
- 17.4 Contractor acknowledges that for the purposes of this Master Contract and any Work Authorization when storing, processing, transmitting or otherwise accessing State data subject to the Family Educational Rights and Privacy Act ("FERPA"), it is designated as a "school official" with "legitimate educational interests" in State data and associated metadata, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Contractor shall use State data only for the purpose of fulfilling its duties under the Master Contract and any Work Authorization and it will not monitor or share such data with or disclose it to any third party except as provided for in this Master Contract and any Work

Authorization, as required by law, or as authorized in writing by the State. By way of illustration and not of limitation, Contractor will not use such data for Contractor's own benefit and, in particular, will not engage in "data mining" of such data or communications, whether through automated or human means, except as necessary to fulfill its duties under this Master Contract and any Work Authorization, or as specifically and expressly provided for in this Master Contract and any Work Authorization, as required by law, or authorized in writing by the State. Contractor agrees, upon request, to provide the State with a written summary of the procedures Contractor uses to safeguard State data.

- 17.5 All of Contractor's systems and components that process, store, or transmit Cardholder Data shall comply with the most recent version of the Payment Card Industry Data Security Standard ("PCI DSS") promulgated by the PCI Security Standards Council, currently available online at: [https://www.pcisecuritystandards.org/document\\_library](https://www.pcisecuritystandards.org/document_library). The Contractor shall, upon request, provide the State with Contractor's current Attestation of Compliance signed by a PCI QSA ("Qualified Security Assessor"). For purposes of this sub-section, "Cardholder Data" has the meaning defined by the PCI Security Standards Council, Payment Card Industry (PCI) Data Security Standard (DSS) and Payment Application Data Security Standard (PA-DSS), Glossary of Terms, Abbreviations, and Acronyms, currently available online at: [https://www.pcisecuritystandards.org/document\\_library](https://www.pcisecuritystandards.org/document_library).
- 17.6 Contractor shall comply with IRS Publication 1075, Exhibit 7, which is incorporated herein.
- 17.7 For the term of this Master Contract and any Work Authorization, Contractor will maintain a provisional Authority to Operate (ATO) at the Moderate Level from the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB) or Federal Agency for any and all Cloud Services provided under this Master Contract and any Work Authorization.
- 17.8 For the term of this Master Contract and any Work Authorization, Contractor will maintain an ISO 27001 Certification for any and all Cloud Services provided under this Master Contract and any Work Authorization.

## **Exhibit B: Insurance Requirements**

### **1. Notice to Contractor.**

- 1.1 The Contractor is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Master Contract.
- 1.2 Contractor shall not commence work under the Master Contract and any Work Authorization until they have obtained all the insurance described below and the State has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of this Master Contract, unless otherwise specified in this Master Contract or any Work Authorization.
- 1.3 The failure of the Contractor to provide a Certificate of Insurance, for the policies required under this Master Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Master Contract shall not constitute a waiver by the State to the Contractor to provide such insurance.
- 1.4 The State reserves the right to immediately terminate this Master Contract and any Work Authorization if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. 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.

### **2. Notice to Insurer.**

- 2.1 The Contractor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 2.2 Insurance certificate holder should be addressed as follows:

Department of Employment and Economic Development, VRS  
1<sup>st</sup> National Bank Building, 332 Minnesota Street, Suite E200  
St. Paul, MN 55101

### **3. Additional Insurance Conditions.**

The following apply to the Contractor, or the Contractor's subcontractor:

- 3.1 Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor's performance under this Master Contract and any Work Authorization.
- 3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State within five (5) business days with a copy of the cancellation notice, unless Contractor'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;
- 3.3 Contractor is responsible for payment of Master Contract and any Work Authorization related insurance premiums and deductibles;
- 3.4 If Contractor is self-insured, a Certificate of Self-Insurance must be attached;

- 3.5 Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.
- 3.6 Contractor's 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 Minnesota Department of Commerce if they are not rated by AM Best.
- 3.7 An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Master Contract.

#### 4. Coverages.

Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

##### 4.1 ***Commercial General Liability Insurance.***

4.1.1 Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Master Contract and any Work Authorization whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence
- \$2,000,000 – annual aggregate
- \$2,000,000 – annual aggregate – applying to Products/Completed Operations

4.1.2 The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- Other; if applicable, please list \_\_\_\_\_
- State of Minnesota named as an Additional Insured, to the extent permitted by law

##### 4.2 ***Commercial Automobile Liability Insurance.***

4.2.1 Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Master Contract and any Work Authorization, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

4.2.2 In addition, the following coverages should be included:

- Owned,
- Hired, and
- Non-owned Automobile.

4.2.3 Evidence of Subcontractor insurance shall be filed with the Contractor.

#### 4.3 Workers' Compensation Insurance.

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

4.3.2 Insurance minimum limits are as follows:

- \$100,000 – Bodily Injury by Disease per employee
- \$500,000 – Bodily Injury by Disease aggregate
- \$100,000 – Bodily Injury by Accident

4.3.3 If Minn. Stat. § 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

4.3.4 If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State with a certificate of insurance.

#### 4.4 ***Professional Liability, Errors, and Omissions.***

4.4.1 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. Insurance minimum limits are as follows:

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

4.4.2 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.

4.4.3 The retroactive or prior acts date of such coverage shall not be after the effective date of this Master 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.

## **Exhibit C: Specifications, Duties, and Scope of Work**

Failure to comply with any specifications, duties, and elements of the scope of work may be considered a material breach of contract and may result in non-payment for that service or termination of the Master Contract or any Work Authorization.

### **1. Personnel**

- 1.1 Contractor shall hire, train, and make available qualified personnel to perform and administer vocational rehabilitation services to persons served under this Master Contract or Work Authorization.
- 1.2 Contractor shall hire, train, and make available qualified personnel that commit to perform and administer vocational rehabilitation services in a manner that is culturally informed and affirming of the lived experience of persons served under this Master Contract or any Work Authorization.
- 1.3 Contractor shall conduct background checks using primary sources on all personnel authorized to provide direct services or transport persons served under this Master Contract or any Work Authorization.
- 1.4 When transportation is provided for persons served under this Master Contract or any Work Authorization, Contractor shall maintain current records of driving licenses and satisfactory driving history of drivers.

### **2. Interpreters**

- 2.1 Contractor shall provide services using the most effective mode(s) of communication to all populations without charge to VRS or persons served.
- 2.2 Contractor shall provide interpreter services for all services under this Master Contract or any Work Authorization.
- 2.3 Contractor is responsible for all necessary interpreting costs.

### **3. Service Delivery**

- 3.1 Contractor shall be committed to providing services and supports for individuals that empower individuals to achieve their goals for competitive, integrated employment.
- 3.2 Contractor shall work collaboratively as part of the team with VRS staff in providing services that are part of the served individual's Employment Plan.

**Exhibit D: Fee-for-Service Rate Schedule**

Contractor: City of Duluth Workforce Development

SWIFT Number: 0000197681015

**Job Related Services - General Services**

Service Title	Rate and Unit	Unit
Informational Interview	\$100	Hour
Internship Services	\$100	Hour
Internship Wages	Wages + 50%	Hour
Job Seeking Skills Training	\$100	Hour
Job Shadow	\$100	Hour
Work Experience – Services	\$100	Hour
Work Experience – Wages	Wages + 50%	Hour

**Benefits Services - General Services**

Service Title	Rate	Unit
Benefits Coaching Hourly Services	\$100	Hour

**Employee Development Services - General Services**

Service Title	Rate	Unit
Employee Development Services (Integrated)	\$100	Hour

**Independent Living Services - General Services**

Service Title	Rate	Unit
Independent Living Services	\$100	Hour

**Post-Secondary Education Services - General Services**

Service Title	Rate	Unit
Postsecondary Supports	\$100	Hour

## Pre-ETS Services

Service Title	Individual Rate	Group Rate (3+ Students in Group)	Unit
Pre-ETS Job Exploration Counseling Services	\$100	\$40	Hour
Pre-ETS Post-Secondary Education Counseling Services	\$100	\$40	Hour
Pre-ETS Instruction in Self-Advocacy Services	\$100	\$40	Hour
Pre-ETS Workplace Readiness Training	\$100	\$40	Hour
Pre-ETS Introductory Work Activities	\$100	\$40	Hour
Pre-ETS Internship - Services	\$100	n/a	Hour
Pre-ETS Internship - Wages	Wages + 50%	n/a	Hour
Pre-ETS Work Experience - Services	\$100	n/a	Hour
Pre-ETS Work Experience- Wages	Wages + 50%	n/a	Hour
Pre-ETS Intake (only VR eligible students)	\$125	n/a	Each
Pre-ETS Work-Based Learning Coaching (only VR eligible students)	\$100	n/a	Hour

## Training Services - General Services

Service Title	Rate	Unit
Transportation Training (Public Transportation Training)	\$100	Hour

## Other Provider Services - General Services

Service Title	Rate	Unit
Intake (Not Applicable to PBA)	\$125	Each
Travel Expense to Provider (to/from participant)	\$50	Hour
Transportation to Vendor (participant is in vehicle)	\$50	Hour

**Exhibit E- Contract Provisions Outlined in Appendix II to Part 2 Code of Federal Regulations 200**

Link to: [Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards](#)

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See [§ 200.323](#).

(K) See [§ 200.216](#).

(L) See [§ 200.322](#).

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014; [85 FR 49577](#), Aug. 13, 2020]