

State of Minnesota

Minnesota State Board of Investment



REQUEST FOR PROPOSAL

FOREIGN TAX ADVISORY SERVICES

Date Posted: May 31, 2022

- Responses must be received not later than 3:00 p.m., Central Time, June 28, 2022.
- **Late responses will not be considered**

Minnesota's Commitment to Diversity and Inclusion

The State of Minnesota is committed to diversity and inclusion in its public procurement process. The goal is to ensure that those providing goods and services to the State are representative of our Minnesota communities and include businesses owned by minorities, women, veterans, and those with substantial physical disabilities. Creating broader opportunities for historically under-represented groups provides for additional options and greater competition in the marketplace, creates stronger relationships and engagement within our communities, and fosters economic development and equality.

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans, and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651-296-2600 or go to [the Office of Equity in Procurement home page, at www.mn.gov/admin/oep](http://www.mn.gov/admin/oep).

SPECIAL NOTICE: This is a request for proposal. It does not obligate the State of Minnesota to award a contract or complete the proposed program, and the State reserves the right to cancel this solicitation if it is considered in its best interest.

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Solicitation Attachments

- Attachment A: Markets Currently Open for SBI Investment Managers
- Attachment B: Responder Declarations
- Attachment C: Exceptions to State's Terms and Conditions
- Attachment D: Responder Forms
 - Veterans Preference Form
 - Workforce Certification
 - Equal Pay Certificate Form

Sample Contract

- Exhibit A: Contract Terms
- Exhibit B: Insurance Requirements
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Pricing

SECTION 1 – INSTRUCTIONS TO RESPONDERS

**Steps for
Completing
Your Response**

Follow the steps below to complete your response to this Solicitation:

- Step 1: Read the solicitation documents and ask questions, if any
- Step 2: Write your response
- Step 3: Submit your response

**Incomplete
Submittals**

A response must be submitted along with any required additional documents. Incomplete responses that materially deviate from the required format and content may be rejected.

STEP 1 – READ THE SOLICITATION DOCUMENT & ASK QUESTIONS, IF ANY

**How to Ask
Questions**

The contact person for questions is:

Paul Anderson
Director, Financial Services and Operations
Minnesota State Board of Investment
acctg.sbi@state.mn.us

Questions should be emailed to the contact by June 7, 2022.
Other personnel are not authorized to answer questions regarding this Solicitation.

STEP 2 – WRITE YOUR RESPONSE

The Proposal Content section is in Section 4. Prepare a written response and supply all requested content. Responses should address the requested information and documents detailed in Section 4. DO NOT INCLUDE Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

Review, sign, and include the Responder Declarations with your response.

STEP 3 –SUBMIT YOUR RESPONSE

Where to Send Your Response Please submit your response via PDF attached to an email to acctg.sbi@state.mn.us.

Proposal submissions are due electronically (emailed) and must be received no later than 3:00 P.M. Central Time, June 28, 2022. **Late responses will not be considered.**

Cost proposals should be submitted as a separate document/attachment from your technical responses. Do not include any cost information in the technical proposal part of your response.

All submitters who meet the June 28, 2022 deadline are also required to provide one bound hard copy and two electronic copies on a flash/thumb drive (one formatted in Microsoft Word and one PDF) of the proposal within five business days of the June 28, 2022 deadline at the following address:

Minnesota State Board of Investment
60 Empire Drive, Suite 355
Saint Paul, MN 55103-3555

Hard copies of the proposals are to be sealed in mailing envelopes or packages with the responder's name and address written on the outside. Provide one copy of the cost detail in a separately sealed envelope clearly marked on the outside "Fee Proposal" along with the responder's name.

All costs associated with producing and submitting a response to this RFP will be borne by the responder. By submitting a response, responder is making a binding legal offer for the period of time set forth below in Section 4.

Late responses will not be considered. Emailed responses received after 3:00 P.M. Central Time, June 28, 2022 will not be considered, even if errors or delays were caused by issues outside of responders' control.

SECTION 2 – SUMMARY OF SCOPE

I. INTRODUCTION

The Minnesota State Board of Investment (SBI) is charged with the investment of approximately \$135.7 billion for the State of Minnesota and related constituents as of December 31, 2021. Of this amount, \$94.1 billion represents retirement funds, which the SBI invests on behalf of various state and local governmental employees. The remainder of the assets are made up of defined contribution assets, tax advantaged savings plans, trust funds and State Cash Accounts.

As approved by Board, the SBI has contracted with a number of investment management firms that invest in Non-U.S. markets to manage its pension assets. Accordingly, certain investments in public equity securities, public fixed income securities as well as private equity and debt funds have been or will be made in a range of foreign countries, including countries such as India, China, Taiwan, Romania and Mexico which have unique tax requirements. As a foreign institutional investor in such circumstances, the SBI is often required to appoint a local tax consultant responsible for the calculation of capital gains tax liability, preparation of annual tax returns, interacting with local tax authorities and performing such other duties as may be required in respective markets by rule, regulation or law.

The SBI is seeking a single U.S. foreign tax advisor, with a wide range of emerging markets local offices, to act as the SBI's local agent and its sole point of contact. Specifically, the U.S. foreign tax advisor would be required to appoint one U.S. entity to act as liaison between SBI staff and the vendor's local offices.

The SBI is therefore seeking proposals from qualified U.S. Certified Public Accounting Firms who can provide tax consultant services in accordance with the specifications indicated in this Request for Proposal (RFP).

The SBI is issuing this RFP to comply with State law which requires all contracts be re-bid every five years. The SBI is open to new and creative approaches and encourages foreign tax advisory consulting organizations to respond to this RFP.

II. BACKGROUND REGARDING THE SBI

A. Legal Authorization

The SBI was created pursuant to Article XI, Section 8, of the Minnesota Constitution for the purpose of "administering and directing the investment of all state funds." Statutory provisions relating to fiduciary responsibility, portfolio composition, and the types of securities in which the SBI may legally invest are set forth in Minnesota Statutes Chapter 11A and 356A (incorporated by reference, a true and correct copy of which can be found at <https://www.revisor.mn.gov/pubs/>).

B. Composition

The Minnesota Constitution specifies the membership of the State Board of Investment to be composed of four elected officials: Governor, State Auditor, Secretary of State, and State Attorney General.

C. Funds Invested by the SBI

The funds invested by the SBI, as of December 31, 2021, are listed below:

<u>Funds</u>	<u>External or Internal</u>	<u>Market Value (Billions)</u>
Combined Retirement Funds	(External)	\$94.1
Fire Plans & Other Public Retirement	(External)	1.1
Participant Directed Investments	(External)	14.5
Non-Retirement Program	(External/Internal)	5.5
State Cash Accounts	(Internal)	<u>20.5</u>
Total		\$135.7

D. External and Internal Asset Management

1. Externally Managed Assets

The SBI invests the Combined Retirement Funds in asset class pools of domestic and international equities, fixed income, private market funds that make an equity or debt investment with a private business. These pools are:

- Active Domestic Equity Pool
- Passive Domestic Equity Pools
- International Equity Pool
- Global Equity Pool
- Core/Core Plus Bond Pool
- Return Seeking Fixed Income Pool
- Treasury Protection Pool
- Ladder Bond Pool
- Cash Pool
- Alternative Investment Pools

The number of funds managed by external investment management companies retained by the Board as of December 31, 2021 are listed below:

<u>Numbers of Accounts</u>	<u>Asset Class</u>
	Combined Funds:
18	Domestic Equity (15 active and 3 passive)
18	International Equity (7 active developed, 6 emerging markets, and 2 opportunistic; 2 passive, and 1 currency overlay)
3	Global Equity
20	Fixed Income (5 core/core plus, 9 return seeking, 3 treasury protection, 2 laddered bond and 1 cash)
286	Private Market Funds (33 Real Estate, 179 Private Equity, 33 Real Assets, and 41 Private Credit)
2	Private Markets Un-invested S&P mandate (1 cash overlay, 1 physical securities)
	Non Retirement Funds:
1	Domestic equity
3	Fixed income
1	Cash
	Participant Directed Investment Program:
2	Low Risk Options (1 Stable Value Fund, and 1 Money Market)
11	Mutual Fund/CIT Options (record keeper, Empower)
1	Brokerage Window Option (record keeper, Empower)
2	State Sponsored Savings Plans: 529 Plan and 529A Plan (third party program managers)

The SBI uses a master custodian, currently State Street Bank, to provide a variety of administrative and management functions for these assets.

2. Internally Managed Assets

The state's cash account, excess debt reserve accounts and several non-retirement laddered bond accounts are managed internally. The State's cash account, the Invested Treasurer's Cash (ITC) account, is the largest pool of assets (~\$20 billion) and is internally managed as a single pooled portfolio. The assets of the ITC cash account and the excess debt reserve accounts are custodied at Principal Financial Group, Des Moines, IA. The OPEB laddered bond portfolio is custodied at State Street. One additional non-retirement laddered bond portfolio is scheduled to be funded in 2022; those assets will likely be custodied at State Street.

III. Foreign Tax Advisory Services Overview

Project Overview

The Minnesota State Board of Investment (SBI) is charged with the investment of approximately \$135.7 billion for the State of Minnesota and related constituents.

As approved by Board, the SBI has contracted with a number of investment management firms that invest in Non-U.S. markets to manage its pension assets. Accordingly, certain investments in public equity securities, public fixed income securities as well as private equity and debt funds have been or will be made in a range of foreign countries, including countries such as India, China, Taiwan, Romania and Mexico which have unique tax requirements. As a foreign institutional investor in such circumstances, the SBI is often required to appoint a local tax consultant responsible for the calculation of capital gains tax liability, preparation of annual tax returns, interacting with local tax authorities and performing such other duties as may be required in respective markets by rule, regulation or law.

GOAL

The SBI currently utilizes foreign tax advisory services in various countries with a single foreign tax advisory firm. The SBI is seeking a single foreign tax advisory service provider with local offices in a wide range of emerging markets to act as our local agent, as required, across multiple emerging markets. Moreover, it is the SBI's intent to have a sole point of contact with the foreign tax advisor that will act as the liaison between the SBI staff and all of the vendor's local offices.

While the SBI currently utilizes foreign tax advisory services only in India, Taiwan and Romania, the SBI recently expanded its bond program to include broader exposure to emerging markets debt, including local currency debt. In addition, the program's equity managers may seek to expand into additional emerging market and/or frontier countries in the future. Therefore, the SBI is seeking a foreign tax advisor that has capabilities in all emerging markets where the SBI would be required to appoint a local tax consultant for capital gains tax liability computations, preparation of annual tax returns, interacting with local tax authorities and performing such other duties as may be required in respective markets by rule, regulation or law.

FOREIGN TAX ADVISOR CONSULTANT RELATIONSHIP

The selected Foreign Tax Advisor Consultant(s) will report to the Executive Director of the Minnesota State Board of Investment or the Executive Director's designee.

1. Foreign Tax Advisor Tasks

The tax consultant will provide SBI and its representatives, including the Custodian and its sub-custodians, and SBI designated pension fund Investment Managers, with ongoing tax consulting and compliance services in relation to its investments made in certain foreign countries with specialized market entrance requirements or tax consultant/tax remittance, through a single point of contact. The sole, foreign tax advisor contact would be required to act as liaison between SBI staff and the vendor's local offices.

While the SBI currently utilizes foreign tax advisory services for its Combined Funds (i.e. Pension Assets) in India, Taiwan and Romania, the SBI anticipates that its need for foreign tax advisory services may expand into additional countries in the future. Therefore, the SBI is seeking a foreign tax advisor that has capabilities in the all emerging markets where the SBI would be required to appoint a local tax consultant for capital gains tax liability computations, preparation of annual tax returns, interacting with local tax authorities and performing such other duties as may be required in respective markets by rule, regulation or law.

The required tasks of the foreign tax advisor are as follows:

1. *Account Opening / Registration Process*

1. Prior to entering into a market, provide SBI staff with an overview of tax treatment, regulations and other requirements, if any, with respect to investing in such country;
2. As required and as instructed by SBI, apply for a permanent account or tax identification number, and any other requirements, within the foreign country and act as liaison with the applicable tax authorities on related matters;
3. Perform other duties, as required, as it relates to the account opening process.

2. *On-going Tax Compliance*

1. Where required by market and based upon information provided by the Custodian, the tax consultant will maintain appropriate detailed financial records and prepare statements for the purpose of computing taxes in relation to: all securities transactions that take place in those markets, including but not limited to, purchase and sale trades, including exchange traded derivative contracts and shares underlying Global Depository Receipts or American Depository Receipts; and dividends/interest received from companies and tax payable.
2. Issue applicable letters/certificates to SBI, its Investment Managers, and local and master Custodians, indicating exempt dividends, the amount of tax payable, if any, at the time of periodic remittances of funds with respect to proceeds on transfer of securities, including exchange traded derivative contracts and shares underlying Global Depository Receipts or American Depository Receipts, and dividends/interest received.
3. Working with local custodians, facilitate deposit of applicable taxes into the appropriate government treasury.
4. Perform other duties associated with tax compliance, as required, including informing SBI of all updates to tax policies and procedures in these markets.
5. From time to time, the SBI may desire assistance in addressing non-U.S. jurisdiction tax issues in private markets. On a case by case basis, the SBI may request assistance on issues such as withholding, UK FATCA, and CRS.

3. Tax filing, assessment and other proceedings.

1. Assist SBI in obtaining income tax registration numbers, etc. as required, if not already obtained.
2. Prepare advance tax computations to be sent to SBI, its Investment Managers, and local Custodian at least two weeks prior to filing. The tax computations must include a detailed report to be sent to the designated SBI staff showing the reconciliation of all transactions between the investment manager(s) and the custodian for each country.
3. Prepare and provide applicable completed income tax returns on a timely basis for review by SBI and transmit/file the agreed upon tax return signed by SBI to the relevant tax/revenue authorities.
4. Pursuant to SBI written authorization, make representations on behalf of SBI before the appropriate tax/revenue authorities during income tax assessment proceedings.
5. After approval from SBI, initiate and complete the process to reclaim all excess taxes paid, as required, on behalf of the SBI.
6. Review tax assessments order(s), if any, issued to the SBI by the appropriate tax/revenue authorities and advise on appropriate and necessary actions for any assessment or non-assessment notices.
7. Advise SBI on actions that may need to be taken to contest any additions made on the assessment(s), including, but not limited to, the need to challenge the assessment through appeal.
8. Pursuant to SBI written instructions, make representations on behalf of SBI before the appropriate tax/revenue authorities in response to outstanding tax demands, tax assessments, miscellaneous inquiry or investigation or other non-assessment related notice(s) issued by appropriate tax/revenue authorities.
9. Working with local custodians, facilitate deposit of applicable taxes into the appropriate government treasury.

4. Appeal Proceeding, if any.

1. Assist in preparation of appeals filing with appropriate government authority for SBI's review and send the agreed upon appeal filings for SBI's signature.
2. Transmit/file the appeals signed by SBI to appropriate government authority.
3. Pursuant to SBI written instructions, make representations on behalf of SBI before the appropriate government authority.
4. Assist in the preparation of detailed submissions to the appropriate government authority pursuant to SBI review and approval.

5. Assist in the appointment of legal counsel, if required, to represent the SBI before the appropriate government authority.
6. Where the matter needs to be elevated to another level, discuss the matter with and obtain written instruction from SBI before proceeding.

SECTION 3 – PROPOSAL INSTRUCTIONS AND ADDITIONAL INFORMATION

1. Anticipated Contract Term.

The contract shall be for a period of five (5) years commencing on or about March 1, 2023. By Minnesota law, the contract may be canceled by the Minnesota State Board of Investment, the Commissioner of Administration of the State of Minnesota, or the contractor, at any time, with or without cause, upon thirty (30) days written notice to the other party.

2. Question and Answer Instructions.

Questions regarding information to be presented in response to the RFP or requesting clarification about this RFP may only be submitted via e-mail to Paul Anderson at: acctg.sbi@state.mn.us no later than June 7, 2022. For the subject line in the e-mail please use "SBI Foreign Tax Advisory Services RFP." SBI will consolidate all questions and its answers into a single Q&A document without divulging the source of the query. The Q&A document will be distributed via e-mail to all firms who received the RFP and will be posted on the SBI's website.

All questions should be submitted no later than the date and time listed in Section 1, Instructions to Responders. The State is not obligated to answer questions submitted after the question due date and time.

Only personnel listed above are authorized to discuss this solicitation with responders. Contact regarding this solicitation with any personnel not listed above could result in disqualification. This provision is not intended to prevent responders from seeking guidance from state procurement assistance programs regarding general procurement questions.

If a Responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the solicitation, please immediately notify the contact person detailed above in writing of such error and request modification or clarification of the document.

3. Additional Tasks or Activities. [IF NEEDED]

Responders are encouraged to propose additional tasks, activities, or goods above and beyond the scope of what is requested in this solicitation if they will substantially improve the results of this procurement. Any costs associated with these additional tasks, activities, or goods should be clearly marked and separated from costs associated with the tasks, activities, or goods specifically requested under this solicitation. Because cost is a factor in the evaluation of responses to this solicitation, failure to separate costs for additional tasks, activities, or goods may result in those costs being included in a responder's cost proposal and result in a lower cost score for that proposal.

SECTION 4 – PROPOSAL CONTENT

The consultant's response to this RFP shall be organized in the following manner and should address the specific tasks in Section I, where appropriate. Please note that consultants will be evaluated, in part, on their ability to communicate clearly and succinctly.

1. **Contact and Sole Relationship:** Provide your firm's name, mailing address and all contact information for the SBI's sole point of contact. Please describe your firm's experience providing local agent tax services in emerging markets.
2. **Market Presence:** Provide a list of all the countries where you have a local office and indicate whether that office is currently providing local agent services for institutional investors. Provide the name of the office, primary contact name and contact information, including mailing address, telephone number, fax number and e-mail address for those offices currently providing local agent services. If the office is not providing local agent services, please indicate whether or could in the future, and if so, how quickly those services could be offered once requested. Describe the relationship of each local office to the U.S. firm.
3. **Market Overview:** For each of the markets with specialized entrance requirements and/or tax consultant/tax remittance requirements, provide general information about tax treatment affecting investments in public securities of non-U.S. companies in such markets, including tax reclaims as appropriate. Identify pertinent issues and potential problems related thereto. Include a tax rate schedule(s) based upon the nature of income (including dividends, interest, short term capital gains, long term capital gains, and other income), information about tax payments, other liabilities, tax return requirements and any other relevant information. At a minimum, please be sure to address all markets listed as currently open or under consideration for opening in Attachment A.
4. **Market Flow of Information and Procedures:** For each of the markets noted above, describe the following:
 - a. Information, and the frequency of that information, that is required to be provided to your firm by the SBI (or its representative/agents) for both ongoing compliance, and year-end requirements.
 - b. Information to be sent from your firm to the SBI and/or its representatives and agents; information that may be required by the local taxing authority or governmental agency at the time of assessment/reassessment, or other proceedings. Please include any sample service level agreements that are customary within the market.
5. **Technical Experience of the Firm:** Provide a statement supporting the qualitative reasons the firm should be considered for the contract. This should address prior experience performing tax consulting services (both U.S. and Non-U.S. markets) for large institutional clients as well as staff competency, and the ability to complete the engagement within established deadlines. For the three (3) most recent continuous years, provide the names and asset size of the three (3) largest institutional funds clients. Describe the process your firm uses to monitor local regulatory changes or potential changes; describe your process for communicating regulatory changes to the firm's clients.

6. **Management Plan:** Submit a written plan for performance of the services by your U.S. firm, including managing work performed by a foreign affiliate. Within this written plan, be sure to specify how you will manage the sole point of contact proposition for the SBI. Include your plan for relationship management and ongoing communication with SBI regarding the status of the program and work performed and for ensuring deliverables are met.
7. **Qualification of Firm and Staff Assigned:**
- a. Identify the principal supervisory and management staff, including the specific partner(s) and manager(s) who will be assigned to the engagement.
 - (1) Indicate the CPA or other licensure status of each person.
 - (2) Submit resumes of each person.
 - (3) Provide as much information as possible about the qualifications and experience of other staff to be employed on this engagement.
 - (4) Indicate how staff competency level over the term of the contract will be assured.
 - b. State the size of the organization and the size of the tax accounting and consulting staff. Please breakdown between U.S. firm and each global affiliate that will perform services.
 - c. Provide a list of the principal offices and indicate the location from which the work on this engagement will be accomplished.
 - d. Indicate the number and experience level of professional staff to be employed and note whether staff will be full-time or part-time.
 - e. Provide copies of any materials that would facilitate evaluation of the U.S. firm and/or affiliate(s).
 - f. Indicate the number of additional clients the central point of contact currently services and note the maximum number of clients this staff member can have. Briefly describe the other responsibilities the sole point of contact has to their assigned clients.
 - g. Describe the compensation structure at the firm.
 - h. Describe your internal continued education and training of your employees
8. **General Information:** Describe the firm's hardware and software systems as well as the system security. Describe the plan to keep data processing systems, databases, software and hardware current. Please reference how your organization determines the need to upgrade and implement upgrades to existing systems.
- a. Describe the firm's disaster recovery and redundancy capability to assure continued operations in an emergency.
 - b. Provide an annual report on Information Technology General Controls in place and test of their operating effectiveness (SSAE 16 - Statement of Controls Information Technology) as performed

and prepared by an independent auditor. Please note whether or not you provide an SSAE 16 to your clients.

9. The SBI invests in alternative investments through limited partnerships and other vehicles and may desire assistance in addressing tax issues in non-U.S. jurisdictions on a case by case basis. Please describe your experience and capabilities in addressing tax issues with respect to alternative investments through limited partnerships and other vehicles in non-U.S. jurisdictions, including but not limited to issues such as withholding, UK FATCA, and CRS.
10. Describe other value added services that your firm, including affiliate, may offer beyond the required services, including, but not limited to, legal services within foreign markets. Referencing the list of markets currently open or under consideration for opening (Attachment A), please make note of any required services that should be taken into consideration when hiring a foreign tax advisor.

11. References

1. Provide a list of at least three references for current, large institutional fund clients that have accounts of similar size and complexity as those described in this RFP. At least one of these references must be for a large public pension plan. The references shall include the name, title, organization, address, e-mail and phone number of the responder's primary contact at the client organization.

12. Fee/Cost Proposal (U.S. \$)

(Provide the electronic cost proposal as a separate document/attachment from your technical responses. Do not include any cost information in the technical proposal part of your response. For the hard-copy submission, provide one copy of the cost proposal in a separately sealed envelope clearly marked on the outside "Cost Proposal" along with the firm's name).

Responders shall provide a flat fee proposal for the following:

Local Agent Services for the markets of India, Taiwan, and Romania

- For all other services requested in the RFP, responders shall provide an Hourly Billing Rate in accordance with the following requirements: Hourly rates shall be broken down by staff level.
- Identify billable duties by staff level.
- Breakdown administrative costs that you will charge for and the rates and estimated time by staff level. Any communications or correspondence with the client and time spent billing the client should either be included with the rates for other services or should be estimated as a separate line item.
- Proposed fees shall be stated for a time period of March 1, 2023 to February 28, 2028.
- A statement that the fee estimate is valid for a minimum of one hundred and eighty (180) days. This period may be extended by mutual agreement between a responder and the SBI.

Submit all requested documentation, including, but not limited to, the following documents:

1. Attachment A: Markets Currently Open for SBI Emerging Markets Managers
2. Attachment B: Responder Declarations
3. Attachment C: Exceptions to State's Standard Terms and Conditions
4. Attachment D: Responder Forms
 - a. Veterans Preference Form (If Applicable)
 - b. Workforce Certification (If Proposal Exceeds \$100,000, Including Extension Options)
 - c. Equal Pay Certificate Form (If Proposal Exceeds \$500,000, Including Extension Options)

DO NOT INCLUDE Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

PROJECT TIMETABLE AND RELATED REQUIREMENTS

RFP Issued.	May 31, 2022
Questions due.	June 7, 2022
Proposals due.	June 28, 2022

PROPOSALS RECEIVED AFTER 3:00 P.M. CENTRAL TIME ON June 28, 2022 WILL NOT BE CONSIDERED.

Proposals evaluated by the Review Committee.	June 29 – July 15, 2022
Review Committee may require that a vendor submitting a proposal make an oral presentation to the Committee during the evaluation process. In such event, the Committee shall notify the vendor of the time and location.	July 15, 2022
Interview with Committee (if needed)	July 2022
Vendor presented for Board approval.	August 24, 2022
Contract completed and executed.	August 25, 2022 - March 2023

SECTION 5 – EVALUATION PROCEDURE AND CRITERIA

All responses received by the deadline will be evaluated by representatives of the Minnesota State Board of Investment. First, the RFP responses will be evaluated to ensure that the mandatory requirements have been met. Proposals that fail to meet the minimum requirements will not advance to the next phase of the evaluation. For those proposals advancing to the next phase of the evaluation, SBI representatives will review the proposals submitted and score the proposal content and cost proposals. The State reserves the right, based on the scores of the proposal, to create a short list of responders receiving the highest scores and to interview or conduct presentations. All scores will be compiled and the SBI representatives will then make a final recommendation to the SBI Board based upon the best overall value to the State. Final selection is subject to approval of the SBI Board and successful contractual negotiation and execution by the SBI Executive Director.

1. **Phase 1 – Responsiveness and Pass/Fail Requirements**

The purpose of this phase is to determine if each response complies with mandatory requirements. The State will first review each proposal for responsiveness to determine if the Responder satisfies all mandatory requirements. The State will evaluate these requirements on a pass/fail basis.

Pass/Fail - Mandatory Requirements

The responder must meet all of the following minimum qualifications to be given further consideration. Failure to satisfy each of the minimum qualifications will result in the immediate rejection of the proposal.

1. The primary foreign tax advisor assigned to the SBI account must have a minimum of five (5) years of experience providing foreign tax advisory services to large institutional plans including public or corporate pension plans.
2. The responder must agree to provide a central point of contact in the United States to liaise between the SBI and the firm's local offices.
3. Proposals must be received on or before the due date and time specified in this solicitation.

Evaluation Criteria: the Factors and Weightings on which the Proposals will be judged are as follows:

1. **The quality and completeness of the vendor's answer to the Proposal Content section of the RFP as it relates to the prescribed duties. (15%)**

Representatives of the SBI will evaluate and score each response in the Proposal Content as it relates to the Foreign Tax Advisor Tasks outlined in this RFP.

2. **The vendor's demonstrated knowledge and experience in foreign tax advisory services and provided references. (20%)**

It is imperative that the entity has been frequently and recently engaged in the field of foreign tax advisory services for large pension or other large institutional clients.

3. The quality of staff to be assigned to fulfill this contract and available support. (15%)

The entity must assign to this contract, in terms of numbers and quality, sufficient staff with experience in the field of foreign tax advisory work for large pension or corporate plans.

4. Demonstrated ability to manage the various foreign tax assignments effectively and assure the successful delivery of the services provided for the SBI. (20%)

The plan for performing and managing the contract, including the framework within which the project team will function, will be evaluated. The entity should demonstrate its ability to manage and control its duties, including reporting and inter-relationships between the foreign tax advisor, the SBI and its staff, and outside vendors of the SBI.

5. Cost Detail and Method of Payment (30%)

1. All costs relating to the proposal shall be explained in detail.
2. Payment shall be made on a pro rata quarterly basis billed in arrears.

The State will make its selection based on best value, as determined by this evaluation process. The State reserves the right to pursue negotiations on any exception taken to the State's standard terms and conditions. In the event that negotiated terms cannot be reached, the State reserves the right to terminate negotiations and begin negotiating with the next highest scoring responder or take other actions as the State deems appropriate. If the State anticipates multiple awards, the State reserves the right to negotiate with more than one Responder.

It is anticipated that the evaluation and selection will be completed by August 24, 2022.

SECTION 6 – SOLICITATION TERMS

1. Competition in Responding

The State desires open and fair competition. Questions from responders regarding any of the requirements of the Solicitation must be submitted in writing to the Solicitation Administrator listed in the Solicitation before the due date and time. If changes are made the State will issue an addendum.

Any evidence of collusion among responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.

2. Addenda to the Solicitation

Changes to the Solicitation will be made by addendum with notification and posted in the same manner as the original Solicitation. Any addenda issued will become part of the Solicitation.

3. Joint Ventures

The State allows joint ventures among groups of responders when responding to the solicitation. However, one responder must submit a response on behalf of all the others in the group. The responder that submits the response will be considered legally responsible for the response (and the contract, if awarded).

4. Withdrawing Response

A responder may withdraw its response prior to the due date and time of the Solicitation. For solicitations in the SWIFT Supplier Portal, a responder may withdraw its response from the SWIFT Supplier Portal. For solicitations done any other way, a responder may withdraw its response by notifying the Solicitation Administrator in writing of the desire to withdraw.

After the due date and time of this Solicitation, a responder may withdraw a response only upon showing that an obvious error exists in the response. The showing and request for withdrawal must be made in writing to Solicitation Administrator within a reasonable time and prior to the State's detrimental reliance on the response.

5. Rights Reserved

The State reserves the right to:

- Reject any and all responses received;
- Waive or modify any informalities, irregularities, or inconsistencies in the responses received;
- Negotiate with the highest scoring Responder[s];
- Terminate negotiations and select the next response providing the best value for the State;
- Consider documented past performance resulting from a State contract may be considered in the evaluation process;
- Short list the highest scoring Responders;
- Require Responders to conduct presentations, demonstrations, or submit samples;
- Interview key personnel or references;
- Request a best and final offer from one or more Responders;
- The State reserves the right to request additional information ; and
- The State reserves the right to use estimated usage or scenarios for the purpose of conducting pricing evaluations. The State reserves the right to modify scenarios, and to request or add additional scenarios for the evaluation.

6. Samples and Demonstrations

Upon request, Responders are to provide samples to the State at no charge. Except for those destroyed or mutilated in testing, the State will return samples if requested and at the Responder's expense. All costs to conduct and associated with a demonstration will be the sole responsibility of the Responder.

7. Responses are Nonpublic during Evaluation Process

All materials submitted in response to this Solicitation will become property of the State. During the evaluation process, all information concerning the responses submitted will remain private or nonpublic and will not be disclosed to anyone whose official duties do not require such knowledge. Responses are private or nonpublic data until the completion of the evaluation process as defined by Minn. Stat. § 13.591. The completion of the evaluation process is defined as the State having completed negotiating a contract with the selected responder. The State will notify all responders in writing of the evaluation results.

8. Trade Secret Information

- 8.1 Responders must not submit as part of their response trade secret material, as defined by Minn. Stat. § 13.37.

- 8.2 In the event trade secret data are submitted, Responder must defend any action seeking release of data it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the data, and any and all costs connected with that defense.
- 8.3 The State does not consider cost or prices to be trade secret material, as defined by Minn. Stat. § 13.37.
- 8.4 A responder may present and discuss trade secret information during an interview or demonstration with the State, if applicable.

9. Conditions of Offer

Unless otherwise approved in writing by the State, Responder's cost proposal and all terms offered in its response that pertain to the completion of professional and technical services and general services will remain firm for 180 days, until they are accepted or rejected by the State, or they are changed by further negotiations with the State prior to contract execution.

10. Award

Any award that may result from this solicitation will be based upon the total accumulated points as established in the solicitation. The State reserves the right to award this solicitation to a single Responder, or to multiple Responders, whichever is in the best interest of the State, providing each Responder is in compliance with all terms and conditions of the solicitation. The State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the State.

11. Requirements Prior to Contract Execution

Prior to contract execution, a responder receiving a contract award must comply with any submittal requests. A submittal request may include, but is not limited to, a Certificate of Insurance.

12. Targeted Group, Economically Disadvantaged Business, Veteran-Owned and Individual Preference

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. § 16C.16, businesses that are eligible and certified by the State as targeted group (TG) businesses, economically disadvantaged (ED) businesses, and veteran-owned businesses will receive points equal to 6% percent of the total points available as preference.

For TG/ED/VO certification and eligibility information visit [the Office of Equity in Procurement website at https://mn.gov/admin/business/vendor-info/oep/](https://mn.gov/admin/business/vendor-info/oep/) or call the Division's Helpline at 651.296.2600.

13. [Instruction: Remove for federally funded project] Reciprocity

State shall comply with Minn. Stat. § 16C.06, subd. 7, as that applies to a non-resident vendor. This paragraph does not apply for any project in which federal funds are expended.

ATTACHMENT A

Markets currently open for SBI investment managers

AD2	UNITED ARAB EMIRATES	ID1	INDONESIA
AE2	DUBAI	IL1	ISRAEL
AR1	ARGENTINA	IND	INDIA
AT2	AUSTRIA	IT7	ITALY
AU8	AUSTRALIA	JP3	JAPAN
AX2	UNITED ARAB EMIRATES	JPF	JAPAN
BE6	BELGIUM	JPI	JAPAN
BR1	BRAZIL	JPT	JAPAN
BR3	BRAZIL	KR3	KOREA
CAN	CANADA	KW1	KUWAIT
CAX	CANADA	LDN	LONDON PHYSICAL
CED	CEDEL	MA2	MOROCCO
CH1	SWITZERLAND	MU1	MAURITIUS
CL4	CHILE	MX1	MEXICO
CN1	CHINA (USD)(SHANGHAI)	MY3	MALAYSIA
CN2	CHINA (HKD)(SHENZHEN)	NG1	NIGERIA
CO1	COLUMBIA	NL6	NETHERLANDS
CZ1	CZECH REPUBLIC	NO3	NORWAY
DEF	GERMANY	NZ4	NEW ZEALAND
DEV	DEUTSCHE FRANKFURT PHYSICAL	PE1	PERU
DK2	DENMARK	PH1	PHILIPPINES
EE2	ESTONIA	PL3	POLAND
EG3	EGYPT	PT5	PORTUGAL
ES6	SPAIN	QA1	QATAR
EUR	EUROCLEAR	RO3	ROMANIA
FI2	FINLAND	RUC	RUSSIA
FR5	FRANCE	SE1	SWEDEN
GBB	UNITED KINGDOM	SG4	SINGAPORE
GBS	UNITED KINGDOM	TH1	THAILAND
GBV	UNITED KINGDOM	TR1	TURKEY
GR2	GREECE	TW6	TAIWAN
HK4	HONG KONG	UY2	URUGUAY
HKC	HONG KONG	ZA4	SOUTH AFRICA
HKP	HONG KONG	ZW3	ZIMBABWE
HU2	HUNGARY		

Additional Markets currently under consideration:

Saudi Arabia

Vietnam

ATTACHMENT B: RESPONDER DECLARATIONS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. Response Contents.** The information provided is true, correct, and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the Responder to suspension or debarment proceedings as well as other remedies available by law.
- B. Authorized Signature.** This Declaration is signed by the appropriate person(s), with the authority to contractually bind the Responder, as required by applicable articles, bylaws, resolutions, minutes, and ordinances.
- C. Non-Collusion Certification.**
 - 1. The Proposal has been arrived at by the Responder independently and has been submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition; and
 - 2. The contents of the Response have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any other individual prior to the due date and time of this Solicitation. Any evidence of collusion among Responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.
- D. Organizational Conflicts of Interest.** To the best of Responder's knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons,
 - 1. a vendor is unable or potentially unable to render impartial assistance or advice to the State;
 - 2. the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
 - 3. the vendor has an unfair competitive advantage.

If after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State's Chief Procurement Officer which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to OSP, the State may terminate the contract for default. Organizational conflicts of interest terms apply to any subcontractors for this work.

- E. Certification Regarding Lobbying.** For State of Minnesota Contracts and Grants over \$100,000, the undersigned certifies, to the best of his or her knowledge and belief that:
 - 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of

Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- F. Copyrighted Material Waiver.** By signing its Response, the Responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response.
- G. Diverse Spend Reporting.** The Sample Contract contains a clause for Diverse Spend Reporting. When this clause applies, Contractor will be required to register in a free portal to report diverse spend. Please see [Diverse Spend Reporting Frequently Asked Questions](#) for additional information.

By signing this form, Responder acknowledges and certifies compliance with all applicable requirements indicated above.

Company Name:
Signature:
Printed Name:
Title:
Date:
Phone Number:
Email Address:

ATTACHMENT C: EXCEPTIONS TO STATE’S TERMS AND CONDITIONS

The State presumes a responder agrees to the terms and conditions of this solicitation unless a responder takes specific exception to one or more of the conditions on this form.

The State reserves the right to reject, negotiate, or accept any exception listed to the State’s terms and conditions (including those found in the attached Sample Contract).

INSTRUCTIONS: A responder must explicitly list all exceptions to State’s terms and conditions, if any (including those found in the attached Sample Contract). Reference the clause number and page number of the State's term and condition for each of a responder’s exceptions. If no exceptions exist, state "NONE" specifically on the form below. Whether or not exceptions are taken, the Responder must sign and date this form and submit it as part of their response. *(Add additional pages if necessary.)*

Clause and Page Number	Suggested Change to Clause	Explanation or Justification

By signing this form, I acknowledge that the above-named responder accepts, without qualification, all terms and conditions stated in this solicitation (including the sample contract) except those clearly outlined as exceptions above.

Signature:

Printed Name:

Title:

Date:

ATTACHMENT D: Responder Forms

STATE OF MINNESOTA VETERAN-OWNED PREFERENCE FORM

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. §16C.16, subd. 6a, the state will award a 6% preference on state procurement to certified small businesses that are majority owned and operated by veterans.

Veteran-Owned Preference Requirements - See Minn. Stat. § 16C.19(d):

- 1) The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business.

or

- 2) The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported By Documentation).

Statutory requirements and appropriate documentation must be met **by the solicitation response due date and time** to be awarded the veteran-owned preference.

Claim the Preference

By signing below I confirm that:

My company is claiming the veteran-owned preference afforded by Minn. Stat. § 16C.16, subd. 6a. By making this claim, I verify that:

- The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business.

or

- My company's principal place of business is in Minnesota **and** the United States Department of Veteran's Affairs verifies my company as being a veteran-owned or service-disabled veteran-owned small business (Supported By Attached Documentation)

Name of Company: _____ Date: _____
Authorized Signature: _____ Telephone: _____
Printed Name: _____ Title: _____

Attach documentation, sign, and return this form with your solicitation response to claim the veteran-owned preference.

STATE OF MINNESOTA – WORKFORCE CERTIFICATE INFORMATION

Required by state law for ALL bids or proposals that could exceed \$100,000

Complete this form and return it with your bid or proposal. The State of Minnesota is under no obligation to delay proceeding with a contract until a company becomes compliant with the Workforce Certification requirements in Minn. Stat. §363A.36.

BOX A – MINNESOTA COMPANIES that have employed more than 40 full-time employees within this state on any single working day during the previous 12 months, check one option below:

- Attached is our current Workforce Certificate issued by the Minnesota Department of Human Rights (MDHR).
- Attached is confirmation that MDHR received our application for a Minnesota Workforce Certificate on _____ (date).

BOX B – NON-MINNESOTA COMPANIES that have employed more than 40 full-time employees on a single working day during the previous 12 months in the state where it has its primary place of business, check one option below:

- Attached is our current Workforce Certificate issued by MDHR.
- We certify we are in compliance with federal affirmative action requirements. Upon notification of contract award, you must send your federal or municipal certificate to MDHR at compliance.MDHR@state.mn.us. If you are unable to send either certificate, MDHR may contact you to request evidence of federal compliance. The inability to provide sufficient documentation may prohibit contract execution.

BOX C – EXEMPT COMPANIES that have not employed more than 40 full-time employees on a single working day in any state during the previous 12 months, check option below if applicable:

- We attest we are exempt. If our company is awarded a contract, we will submit to MDHR within 5 business days after the contract is fully signed, the names of our employees during the previous 12 months, the date of separation, if applicable, and the state in which the persons were employed. Send to compliance.MDHR@state.mn.us.

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of your company.

Name of Company: _____ Date _____

Authorized Signature: _____ Telephone number: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

Web: <http://mn.gov/mdhr/>

TC Metro: 651-539-1095

Toll Free: 800-657-3704

Email: compliance.mdhr@state.mn.us

TTY: 651-296-1283

State of Minnesota - Equal Pay Certificate

If your response could be in excess of \$500,000, please complete and submit this form with your submission. **It is your sole responsibility to provide the information requested and when necessary to obtain an Equal Pay Certificate (Equal Pay Certificate) from the Minnesota Department of Human Rights (MDHR) prior to contract execution. You must supply this document with your submission.** 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 email at compliance.MDHR@state.mn.us.

Option A – If you have employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the applicable box below:

- Attached is our current MDHR Equal Pay Certificate.
- Attached is MDHR’s confirmation of our Equal Pay Certificate application.

Option B – If you have not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the box below.

- We are exempt. We agree that if we are selected we will submit to MDHR within five (5) business days of final contract execution, the names of our employees during the previous 12 months, date of separation if applicable, and the state in which the persons were employed. Documentation should be sent to compliance.MDHR@state.mn.us.

The State of Minnesota reserves the right to request additional information from you. **If you are unable to check any of the preceding boxes, please contact MDHR to avoid a determination that a contract with your organization cannot be executed.**

Your signature certifies that you are authorized to make the representations, the information provided is accurate, the State of Minnesota can rely upon the information provided, and the State of Minnesota may take action to suspend or revoke any agreement with you for any false information provided.

Authorized Signature: _____ Date: _____

Printed Name: _____ Title: _____

Organization: _____ MN/Fed Tax ID: _____

Issuing Identity: _____ Project # or Lease Address: _____



State of Minnesota Professional and Technical Services Contract

SWIFT Contract Number: _____

This Contract is between the State of Minnesota, acting through MN State Board of Investment (“State”) and [Contractor] whose designated business address is [Contractor’s business address] (“Contractor”). State and Contractor may be referred to jointly as “Parties.”

Contract

1. Term of Contract

- 1.1 Effective date. March 1, 2023, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State’s Authorized Representative to begin the work.
- 1.2 Expiration date. February 28, 2028, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2. Contractor’s Duties

The Contractor shall perform all duties described in this Contract to the satisfaction of the State.

The Contractor, who is not a State employee, shall:

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 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 Contract, to the satisfaction of the State.
- 3.3 Contractor warrants that it possesses the legal authority to enter into this 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 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 Contract. In the performance of this Contract, time is of the essence.

5. Consideration and Payment

Consideration. The State will pay for performance by the Contractor under this Contract as follows:

5.1.1 Compensation. The Contractor will be paid

5.5.2 Total obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$

5.2 Payment.

5.2.1 Invoices. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the goods received or services actually performed, and the State's Authorized Representative accepts the invoiced goods or services. Invoices must be submitted timely and according to the following schedule:

5.2.2 Retainage. Under Minn. Stat. § 16C.08, subd. 2 (10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract 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 this Contract.

5.2.3 Conditions of payment. All services delivered by the Contractor under this Contract must be performed to the State's satisfaction 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.

6. Authorized Representative

The State's Authorized Representative is, or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative. The Contractor's Authorized Representative is [name, title] at the following business address and telephone number: [insert business address and telephone number], or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

7. Exhibits

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

- Exhibit A: Contract Terms
- Exhibit B: Insurance Terms
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Price and Payment Schedule

1. State Encumbrance Verification

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Print Name: _____

Signature: _____

Title: _____ Date: _____

SWIFT Contract No. _____

2. Contractor

The Contractor certifies that the appropriate person has executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print Name: _____

Signature: _____

Title: _____ Date: _____

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: _____

Admin ID: _____

SAMPLE

Exhibit A: Contract Terms

1. Prompt Payment and Invoicing.

1.1 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, 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.

The payment for each order will only be made for goods received or services actually performed that have been accepted by the ordering entity, and meet all terms, conditions, and specifications of the Contract and the ordering document.

1.2 Invoicing. The invoice must be in the same format as the sample invoice form approved as Exhibit D, Supplement 1 with the Contract, unless an alternative format is approved in writing by the State Authorized Representative, or delegate. See Exhibit D, Supplement 1 for a list of minimum invoice requirements.

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

2.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors.

2.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.

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

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

3. Termination.

3.1 Termination for Convenience. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination 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 Contract, 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 Contract.

3.3 Termination for Insufficient Funding. The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services addressed within this 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 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 Contract 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 Contract, 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.

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 Contract.

5.2 Nothing within this Contract, 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 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 Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

7. Subcontracting and Subcontract Payment.

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

After the effective date of the Contract, 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 Contract was awarded. During this Contract, 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 Contract.

The provisions of the Contract 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 Contract.

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 Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify 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 Contract.

10.1.2 "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, 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 Contract. "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 Contract. 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 Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State,

execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

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 Contract.

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 Contract, 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 Contract, 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 nonpatented invention, article or appliance furnished or used in the performance of the Contract.

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 Contract whenever the Contract 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 Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract 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 Contract 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 Contract 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 Contract.

14. Diverse Spend Reporting.

If the total value of the Contract 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 Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Contract 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 Contract is in effect.

15. Publicity and Endorsement.

15.1 Publicity. Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State’s Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, 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 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 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. 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.

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

If the value of this 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.

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

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

20. 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.

21. Affirmative Action Requirements

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

21.1 Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.

21.2 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.

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

AFFIRMATIVE ACTION FOR DISABLED WORKERS

21.3.1 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.

21.3.2 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.

21.3.3 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.

21.3.4 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.

21.3.5 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.

21.4 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 Contract by the Commissioner or the State.

21.5 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.

22. Equal Pay Certification.

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this 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.

23. 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 Contract, 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 Contract, 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.

24. 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.

25. **Survival of Terms.**

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

26. **Vaccination/Testing Requirements**

26.1 **Applicability.** This section applies to Contractor’s employees or subcontractors who are performing contracted work in the following types of project settings: indoors with regular in-person contact with State agency employees or members of the public; and outdoors with substantial and/or regular in-person, non-socially distanced contact with State agency employees or members of the public (“Covered Individuals”).

26.2 **Requirements.** In accordance with HR/LR Policy #1446, Covered Individuals must be fully vaccinated against COVID-19 as defined in the policy or submit to testing at least once a week.

26.3 **Compliance.** Contractor is responsible for the following:

26.3.1.1 Tracking and maintaining proof of vaccination status for vaccinated Covered Individuals;

26.3.1.2 Ensuring Covered Individuals who are not vaccinated are tested on a weekly basis;

26.3.1.3 Monitoring test results and ensuring that Covered Individuals with positive test results do not access the State workplace to perform contractual services until the Covered Individual has been medically cleared; and

26.3.1.4 Ensuring its Covered Individuals do not access the location where the contracted work is occurring if the Covered Individual is not in compliance with the requirements stated in item Requirements, detailed in this clause.

26.4 **Reporting.** Upon request, Contractor shall provide the State with documentation demonstrating compliance with these requirements. Contractor shall maintain documentation for a minimum of thirty (30) days past the end date of the contract.

27. **Security and Data Protection.** Contractor is responsible for the security and protection of State data subject to and related to Cloud Services in this Contract. 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 Contract, if in conflict. This Security and Data Protection section, including its sub-sections, survives the completion, termination, expiration, or cancellation of the Contract.

For the purposes of this Security and Data Protection section, the following terms have the following meanings:

"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.

"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 Contract).

"Data" has the meaning of "government data" in Minn. Stat. § 13.02, subd. 7.

"Not public data" has the meaning in Minn. Stat. § 13.02, subd. 8a.

"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.

"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.

27.1 Data Ownership. 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.

Contractor will only use State data for the purposes set forth in the Contract. Contractor will only access State data as necessary for performance of this Contract. Contractor will not access State user accounts except to respond to service or technical problems or at the State's specific request.

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 Contract. 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.

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.

27.2 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 Contract, 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 Contract. Contractor will reasonably mitigate any harmful effects resulting from any privacy incident or security incident involving any State data.

- 27.3 Security Program. Contractor will make best efforts to protect and secure the State data related to this Contract. 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").

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.

- 27.4 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.

27.5 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 Contract.

- 27.6 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.

- 27.7 Data Center and Monitoring/Support Locations. During the term of the Contract, 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.

27.8 Security Audits & Remediation. 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.

Upon the State’s reasonable, advance written request, Contractor will provide to the State a copy of the Contractor Audit Report.

Contractor will make best efforts to remediate any control deficiencies identified in the Contractor Audit Report in a commercially reasonable timeframe.

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.

- 27.9 Insurance and Liability. Contractor warrants that it has and will maintain the insurance described below in force and effect throughout the term of the Contract. 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 Contract provided that Contractor warrants that the minimum coverage requirements below are met.

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 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 Contract, 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.

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, 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 Contract. Contractor shall maintain such insurance for a period of at least three (3) years following expiration or termination of the Contract. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

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 Contract. 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 Contract 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 Contract 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.

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

27.10 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 Contract that apply to Contractor with respect to such data.

27.11 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.

27.12 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.

27.13 Business Continuity. 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 Contract 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.

Any term or condition that allows the Contractor to terminate the Contract for any or no reason (i.e., termination for convenience) is null and void. In the event of termination or cancellation of this 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.

27.14 Background Checks. 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.

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.

27.15 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.

27.16 Compliance with Data Privacy and Security Laws and Standards. 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.

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.

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").

Contractor acknowledges that for the purposes of this Contract 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 Contract and it will not monitor or share such data with or disclose it to any third party except as provided for in this Contract, 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 Contract, or as specifically and expressly provided for in this Contract, 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.

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. 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.

Contractor shall comply with IRS Publication 1075, Exhibit 7, which is incorporated herein.

For the term of this Contract, 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 Contract.

For the term of this Contract, Contractor will maintain an ISO 27001 Certification for any and all Cloud Services provided under this Contract.

SAMPLE

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 Contract.
- 1.2 Contractor shall not commence work under the contract 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 Contract, unless otherwise specified in this Contract
- 1.3 The failure of the Contractor to provide 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 State to the Contractor to provide such insurance.
- 1.4 The State reserves the right to immediately terminate this Contract 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:

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 Contract.
- 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 Contract 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 Contract.

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

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

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

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- 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. Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance minimum limits are as follows:

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

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile.

Evidence of Subcontractor insurance shall be filed with the Contractor.

4.3 Workers' Compensation Insurance. 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. 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

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.

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.** 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

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.

- 4.5 **Network Security and Privacy Liability Insurance (or equivalent).** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. Contractor shall maintain insurance to cover claims which may arise from failure of Contractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:

\$2,000,000 per occurrence
\$2,000,000 annual aggregate

The following coverage shall be included: State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

- 4.6 **Privacy Liability Insurance (or equivalent).** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The Contractor shall maintain insurance to cover claims which may arise from failure of the Contractor to ensure the security of not public data stored on the State's documents, including but not limited to paper, microfilms, microfiche, magnetic computer tapes, cassette tapes, photographic negatives, photos, hard disks, floppy disks, and carbon sheets, while in the Contractor's care, custody, and control. Insurance minimum limits are as follows:

\$2,000,000 - Per Occurrence
\$2,000,000 - Annual Aggregate

The following coverage shall be included: State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

Property of Others Insurance (or equivalent). [Include this insurance requirement when there is property owned by the state that is or may be in the Contractor's care, custody, and control. Please note this coverage should be used if the Contractor is removing the state property from state grounds.] The Contractor shall maintain a Property insurance policy covering "All Risk" of direct physical loss or damage, or equivalent, including the perils of theft, flood, transit, earthquake, and pollution clean-up expense for property owned by the state that is in the Contractor's care, custody, and control. Any deductible shall be the sole responsibility of the Contractor. Insurance **minimum** limits are as follows: The Contractor is solely responsible for the coverage equal to that of the actual cash value of state-owned property in the Contractor's care, custody, and control at any given point in time.

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