

**Contract for Professional Services Terms and Conditions**

 **By and Between Regents of the University of Minnesota (“University”)**

 **and State of Minnesota, through its Minnesota State Colleges and Universities (“MnSCU”)**

1. **Acceptance and Term**. This Agreement is effective on the date signed by both parties and will remain in effect until the date indicated on the CPS, until all obligations set forth in this Agreement have been fulfilled, or the Agreement has been terminated, whichever occurs first. ANY WORK PERFORMED PRIOR TO THE EFFECTIVE DATE WILL BE PERFORMED AT MnSCU’s OWN RISK AND AS A VOLUNTEER.

**2. Scope of Work.** MnSCU will perform all of the services and supply goods (if any) set forth in the CPS (“Services”) and any exhibits attached thereto (“Scope of Work”). Time is of the essence. MnSCU will meet all milestones indicated on the CPS and Scope of Work.

**3. Consideration and Terms of Payment.** University will pay for all Services as follows:

**3.1. Total Obligation.** University’s total obligation to MnSCU will not exceed the amount indicated on the CPS without University’s prior, express written approval. Reimbursement requests must be itemized and accompanied by receipts. Travel expenses must be consistent with University’s travel policy, http://policy.umn.edu/Policies/Finance/Travel/TRAVEL.html.

**3.2. Invoicing and Terms of Payment.** MnSCU will submit invoices upon completion of milestones described in Exhibit A, or as provided in Exhibit A. University will pay such invoices thirty (30) days after receipt of MnSCU’s invoice.

**4. General Terms and Conditions.** These terms and conditions will govern and control over different or additional terms and conditions MnSCU may have included in any document provided to University. Handwritten changes on this document will be ignored and have no effect unless initialed by both parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Bid (RFB), the following order of precedence will apply: (1) this Agreement and its Exhibits, (2) RFP or RFB, and (3) MnSCU’s Response to RFP or RFB.

**4.1. Choice of Law, Forum Selection, Entire Agreement, and Amendment.** This Agreement will be construed under Minnesota law, without regard for choice of law considerations. Any action arising out of this Agreement will be heard by a court in Minnesota. This Agreement is the parties’ entire agreement and understanding and replaces any prior or contemporaneous agreement, written or oral. Any Amendment to this Agreement must be documented by University’s Change Order (“Amendment”). Further, if Services are being procured with federal funds, the requirements set forth in Exhibit B (http://purchasing.umn.edu/docs/FederalFlowdown.pdf) are incorporated into this Agreement. In addition, if the price is in excess of $10,000, **University and Seller shall abide by the requirements of 41 CFR 60-741.5(a), which prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities**. If the price is in excess of $100,000, **University and Seller shall abide by the requirements of 41 CFR 60-300.5(a), which prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans**. Also, if federal funds are being used, Contractor must fill out the form required by the Federal Funding Accountability and Transparency Act, Pub. L. No. 109-282. If federal contract funds are not being used, Contractor will not receive Exhibit B.

**4.2. Warranty.** MnSCU warrants (i) it is not debarred or suspended from doing business with the federal government, and it will notify University if it becomes debarred or suspended; and (ii) the Services will be of professional standards and quality; are free from defects in material and workmanship; are the quality, size and dimensions ordered; comply with MnSCU’s representations in any advertisement, correspondence, or response to University’s RFP or RFB; comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and are not restricted by patents, copyrights, trade secrets, or other rights of third parties. If any warranty is breached, MnSCU will correct the breach at its sole expense, and University reserves all rights and remedies. The foregoing warranties will not be deemed waived by reason of University’s acceptance of the Services.

**4.3. Inspections and Delivery.** University will have a reasonable time (not less than thirty [30] days) after receipt to inspect and test Services and reject any or all nonconforming items. Services rejected or in excess of quantities ordered may be returned at MnSCU’s expense. University reserves the right to refuse any Services and to cancel all or part of this Agreement if MnSCU fails to deliver all or any part of the Services. If University accepts nonconforming or defective Services, in addition to its other remedies, University may deduct a reasonable amount from the price to compensate University for the nonconformity.

**4.4. Assignment.** Neither party may assign any part of this Agreement without the other’s express, prior written consent. In the event of any assignment, the assignor will remain responsible for its performance and that of any assignee. This Agreement will be binding upon each party and its successors and assigns. Any attempted assignment in violation of this Agreement will be void. Notwithstanding any notice of assignment, University’s tender of payment to MnSCU or to any person University reasonably believes to be entitled to payment, will satisfy University’s obligation to pay. In no event will University be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

**4.5. Taxes.** University is exempt from paying certain Minnesota sales and use taxes. Minn. Stat. §297A.70. MnSCU will not charge University for such taxes. Alternatively, MnSCU will be responsible for payment of any and all sales taxes relating to the following items: construction materials, leased motor vehicles, food and lodging. MnSCU will promptly reimburse University for such taxes University pays on MnSCU’s behalf, including penalties, damages, interest, and expenses (including attorneys’ fees) resulting from MnSCU’s failure to properly remit or reimburse University for such taxes for an amount not exceeding the amount of the Contract.

**4.6. Risk of Loss**. Risk of loss will pass to University upon actual receipt and acceptance, at the University destination. MnSCU assumes responsibility for packing, crating, marking, transporting and loss or damage in transit, notwithstanding University’s agreement to pay freight, express, or other transportation charges.

**4.7. Use of Name or Logo**. Neither party will use the name, logo, or other marks (including, but not limited to, colors and music) owned by or associated with the other or the name of any representative of the other in any sales promotion work or advertising, or any form of publicity, without the written permission of the other. Permission from University must be obtained from University’s Office of University Relations in each instance.

**4.8. Termination.** University may terminate this Agreement in whole or in part for its convenience*.* Upon notice of such termination, MnSCU will immediately stop all work, including shipment of goods, and cause its suppliers and subcontractors to cease work for this Agreement. In the event of such termination, MnSCU will be entitled to payment, calculated on a pro rata or other equitable basis, for Services satisfactorily performed. In no event will MnSCU be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

University may terminate this Agreement in whole or in part for causeupon seven (7) days written notice if MnSCU fails to comply with any material term, condition, or requirement of this Agreement or becomes insolvent or files for bankruptcy protection. In this event, University will not be liable to MnSCU; MnSCU will be liable to University for all losses, damages, and expenses, including, without limitation, excess cost of reprocuring similar Services; shipping charges for items University may at its option return to MnSCU, including items already delivered; and amounts paid by University for any items University has received but returns to MnSCU for an amount not exceeding the amount of the Contract. If a determination is made that University improperly terminated this Agreement for cause, such termination will be deemed to have been for University’s convenience.

**4.9. Independent Contractor**. The relationship between the parties is solely that of independent contractors, not partners, joint venturers, employees, agents, or otherwise. Neither shall have any authority to bind the other in any manner, and shall not represent or imply that it has such authority. Each party will pay when due all required employment taxes and tax withholding and acknowledges that it and its employees are not entitled to tax withholding, workers’ compensation, unemployment compensation or any employee benefits, statutory or otherwise. Each party is solely responsible for the acts of itself, its employees and agents.

**4.10. Non-Waiver**. No waiver by a party of any default or nonperformance will be deemed a waiver of any subsequent default or nonperformance.

**4.11. Audit and Retention of Books and Records.** University may inspect and copy books, records, and documents (in whatever medium they exist) and accounting procedures and practices of MnSCU, its agents, and subcontractors solely to verify MnSCU’s performance and all expenses submitted pursuant to the terms of this Agreement. MnSCU will make such items available for inspection during normal business hours at MnSCU’s place of business. All such items will be retained by MnSCU during the term of this Agreement and for a period of three (3) years after the delivery of the Services. Any items relating to a claim arising out of the performance of this Agreement will be retained by MnSCU, its agents and subcontractors, if any, until the claim has been resolved.

**4.12. Limitation of Liability**. IN NO EVENT WILL A PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT. UNIVERSITY’S MAXIMUM OBLIGATION UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT SET FORTH IN SECTION 3.

**4.13. Changes.** University may, by written notice, change drawings, designs, specifications, materials, packaging, and the time and place of delivery and/or completion of the Services. Promptly upon receipt of such notice, MnSCU will either advise that the change will not affect its costs, or furnish: (i) a breakdown of estimated cost and changes in the compensation attributable thereto, and (ii) a statement of any necessary changes in the time of completion. MnSCU’s failure to advise University in writing within ten (10) days of the effect of any such change will constitute MnSCU’s agreement to the change without change in the amount to be paid, time of completion, or other terms and conditions of this Agreement.

**4.14. University Information.** MnSCU agrees that any information it receives which concerns personal, financial, or other affairs of University, its regents, officers, employees or students will be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (“DPA"). Within fifteen (15) days of the completion or earlier termination of this Agreement, or upon earlier request of University, MnSCU will return all documents, data and other information provided by University to MnSCU. Upon University’s request, MnSCU will destroy all copies of data, documents, or information provided by University and provide University with proof of such destruction. MnSCU will comply with DPA as it applies to data created, collected, received, stored, used, maintained, or disseminated by MnSCU or provided by University under this Agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this Article by either MnSCU or University.

**4.15. Intellectual Property Rights**. “Works” means creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which MnSCU prepares and delivers under this Agreement. University will exclusively own all Works and all copyrights, trademarks, patents and other proprietary rights in the Works. All copyrightable Works will be considered “work made for hire.” If the Works may not be considered work made for hire under 17 U.S.C., §§ 101 and 201(b), MnSCU will assign all rights MnSCU may have in the Works to University without further compensation. MnSCU waives any and all statutory moral rights in the Works which MnSCU may have under 17 U.S.C. § 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of moral right. MnSCU will, without further compensation, disclose information to University and execute such documents as may be reasonably necessary to assist University in securing and enforcing rights in the Works and related proprietary rights. Notwithstanding the foregoing, MnSCU does not transfer MnSCU’s pre-existing intellectual rights that were created prior to the effective date of this Contract to the University. This Contract does not transfer, modify or diminish any pre-existing intellectual property rights of each party. This Contract also does not transfer any third parties intellectual property used in the performance of Services under this Contract.

**4.16.** I**nsurance**. Unless more specific insurance provisions are attached, the following will apply. At all times during its performance under this Agreement, MnSCU will obtain and keep in force:

i. General Liability insurance including coverage for bodily injury and property damage with limits not less than $500,000 each occurrence and $1,500,000 annual aggregate.

ii. Automobile Liability insurance with a minimum limit of not less than $1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

iii. Professional Liability insurance with a limit of not less than $500,000 per claim/occurrence and $1,500,000 annual aggregate for damages caused by error, omission or negligent acts related to any professional services to be provided under this Agreement. If written on a claims-made basis, the professional liability insurance will be maintained for a period of not less than two (2) years following the expiration or termination of this Agreement.

iv. Workers' Compensation insurance as required by statute and Employers Liability insurance with limits not less than $1,000,000 each accident, $1,000,000 disease – each employee, $1,000,000 disease – policy limit.

These insurance policies are to be issued by an insurance company authorized to do business in the State of Minnesota with an A.M. Best rating of A- or better. Regents of the University of Minnesota will be included as an additional insured for General Liability and Automobile Liability. Limit requirements may be met through combination of Primary and Umbrella/Excess insurance. All such policies will provide for thirty (30) days’ written notice to University prior to cancellation or non-renewal. MnSCU’s insurance must be primary and non-contributory with regard to any insurance or self-insurance maintained by University. MnSCU and its insurers waive all rights of subrogation against University. As an option for purchasing the above insurance, MnSCU, as a Minnesota State Agency, may self-insure for those liabilities.

**4.17. Responsibility**. Subject to applicable law, including the Minnesota Tort Claims Act, each party will be responsible for all claims, actions, and direct damages caused by the responsible party's negligence, willful wrong-doing or breach of this Agreement.

**4.18. Anti-Kickback Enforcement Act of 1986**. This Agreement is subject to the Anti-Kickback Enforcement Act of 1986, P. L. 99-634 (41 U.S.C. 51-58). MnSCU: (i) certifies it has not paid kickbacks directly or indirectly to any University employee for the purpose of obtaining this or any other University Agreement; (ii) will cooperate fully with any investigation involving a possible violation of the Act; and (iii) will report any suspected violations of the Act to University’s Director of Audits at (612) 625-1368. MnSCU certifies it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of Minnesota Statute § 15.43.

**4.19. Affirmative Action, Equal Employment Opportunity, and Targeted Group Business.** University is committed to the policy that all persons will have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation, and is committed to transacting business only with firms who follow these practices. MnSCU must apply every good faith effort to ensure implementation of this policy in its practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. MnSCU will maintain non-segregated facilities for its employees and not allow employees to perform services at segregated facilities. If required by applicable law, MnSCU will have a written Affirmative Action Plan for each of its establishments. To the extent applicable, MnSCU agrees to comply with (i) Executive Orders 11246 and 11375 and the rules and regulations promoting Equal Employment Opportunities (41 CFR Chapter 60); (ii) Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations promoting employment opportunities for disabled and Vietnam veterans (41 CFR Part 60-250); (iii) Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516*,* Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-47 1) in promoting affirmative action in Employment of the Handicapped; (iv) Public Law 95-507 in promoting the policy that small business concerns owned and controlled by socially and economically disadvantaged will have maximum practicable opportunity to participate in University’s Bidding process; and (v) Minnesota Statutes, Chapter 363 in promoting the equal rights and non-discrimination of persons based on race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status or sexual orientation. University’s Targeted Group Business Policy and Affirmative Action Policy are incorporated into this Agreement by reference and MnSCU will comply with such policies. If applicable, MnSCU certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Agreement, MnSCU certifies that it complies with all applicable federal and state laws as well as University policies related to non-discrimination, equal employment opportunity, and affirmative action.

**4.22. Rights** **of the Federal Government to Inventions Made Under a Contract or Agreement.** To the extent this Agreement involves the performance of experimental, developmental, or research work, the rights of the Federal Government and University to any resulting inventions will be determined in accordance with 37 CFR part 401, *“Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,”* and any implementing regulations issued by the awarding agency.

**4.23. Notices/Administration**. Notices a party is required or elects to deliver will be in writing and delivered personally, by facsimile or electronic mail (with delivery confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth in the CPS or to such other address as such party may designate by notice given pursuant to this section.

**4.24. University Contract Number**. MnSCU will place University Contract Number on any packages, invoices, packing slips, notices and correspondence related to this Agreement.

**4.25.** “**Most Favored Customer”**. If MnSCU has negotiated terms or conditions for Services to another client under reasonably similar circumstances, University may purchase Services on the same terms and conditions.

**4.26. Cash Discount Period**. The cash discount or other payment discount period available to University will commence on the later of: (i) University’s receipt of all Services under this Agreement, or (ii) University’s receipt of MnSCU’s invoice.

**4.27. Fund Availability**; **Federal Funds Contingency**. University’s financial obligations payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement is funded in whole or in part with federal funds, University’s payment obligations are subject to and contingent upon the continuing availability of those funds for the purposes hereof.

**4.28. Severability.** If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, will not be affected and each provision of the remainder of the Agreement will be valid and be enforceable to the fullest extent permitted by law.

**4.29. Survivability**. The terms and conditions of this Agreement that by their sense and context are intended to survive the performance thereof will so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

**4.30. Gramm-Leach-Bliley Security Compliance**. If the Services are subject to the Gramm-Leach-Bliley Act, MnSCU will implement and maintain ‘appropriate safeguards,’ (see § 16 C.F.R. § 314 (the ‘FTC Rule’)), for all ‘customer information’ owned by University and delivered to MnSCU pursuant to this Agreement. MnSCU will assist and cooperate in University’s efforts to ensure and confirm MnSCU’s compliance with the terms of this section, including, without limitation: (i) permitting University employees or representatives to inspect MnSCU’s business records, procedures, rules and practices pertinent to the ‘safeguards’; and (ii) making available to University employees or representatives MnSCU’s employees or representatives who have authority to maintain or are knowledgeable of such ‘safeguards’. MnSCU will promptly notify University in writing, of each instance of: (a) unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer of University; or (b) unauthorized disclosure, misuse, alteration, destruction or other compromise of customer information. Within thirty (30) days of the termination or expiration of this Agreement, MnSCU will destroy and will cause each of its agents to destroy all records, electronic or otherwise, in its or its agent’s possession that contain customer information and will deliver to University a written certification of the destruction. MnSCU will be responsible for its own acts and behavior and the results thereof. To the extent permitted by Minnesota law, MnSCU will reimburse University for its direct damages (e.g., costs to reconstruct lost or altered information) arising out of an act or omission by MnSCU or its agents and contractors that results in: (α) a person having access to or use of customer information in violation of law or this Agreement, or (β) misuse, alteration, destruction or material alteration of customer information in violation of law or this Agreement.

**4.31. Export Controls (International Traffic in Arms Regulations and Export Administration Regulations).** Before furnishing goods, software, services or technical data that are on the U.S. Munitions List (22 C.F.R. pt. 121) or in the 500- or 600-series of the Commerce Control List (15 C.F.R. pt. 774), MnSCU will notify University that such items are export controlled. MnSCU will ship export-controlled items only after University’s Export Controls Officer has furnished written confirmation that University is prepared to accept delivery of such items.

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| **Regents of the University of Minnesota**By: Name:      Title:      Date:  | **Board of Trustees of the Minnesota State Colleges and Universities System on Behalf of**By: Name:      Title:      Date:  |