

State of Minnesota Judicial Branch
7th, 8th, 9th Districts

Request for Proposals

Multifunction Copiers
July 21, 2014

I. REQUEST FOR PROPOSALS.

- A. Defined. The 7th, 8th and 9th Districts, of the Minnesota Judicial Branch, are using a competitive selection process to select possible vendors to provide multifunction copiers throughout their Districts.
- B. Right to Cancel. The State is not obligated to respond to any proposal submitted, nor is it legally bound in any manner whatsoever by the submission of a proposal. The State reserves the right to cancel or withdraw the request for proposals at any time if it is considered to be in its best interest. In the event the request for proposals is cancelled or withdrawn for any reason, the State shall not have any liability to any proposer for any costs or expenses incurred in connection with this request for proposals or otherwise. The State also reserves the right to reject any or all proposals, or parts of proposals, to waive any informalities therein, and to extend proposal due dates.

II. PROJECT OVERVIEW/SCOPE OF WORK

- A. The 7th, 8th and 9th Districts, of the Minnesota Judicial Branch are seeking proposals from vendors to provide multifunction copiers throughout their Districts. These devices are to be the primary enterprise/work group multifunction copier in each location and should be proposed as such. The life expectancy of the devices should be no less than 7 years, if kept under a full maintenance agreement.

- B. Location and number of copiers under consideration for replacement:

1. 7 th District	District Administration Office – St. Cloud	Qty. 1
2. 7 th District	Becker County – Detroit Lakes	Qty. 1
3. 7 th District	Otter Tail County – Fergus Falls	Qty. 1
4. 7 th District	Douglas County – Alexandria	Qty. 1
5. 7 th District	Morrison County – Little Falls	Qty. 1
6. 7 th District	Benton County – Foley	Qty. 1
7. 7 th District	Stearns County – St. Cloud	Qty. 3
8. 7 th District	Todd County – Long Prairie	Qty. 1
9. 7 th District	Wadena County – Wadena	Qty. 1
10. 7 th District	Mille Lacs County – Milaca	Qty. 1
11. 8 th District	Chippewa County – Montevideo	Qty. 1
12. 8 th District	Kandiyohi County – Willmar	Qty. 2
13. 8 th District	Lac qui Parle County – Madison	Qty. 1
14. 8 th District	Pope County – Glenwood	Qty. 1
15. 8 th District	Renville County – Olivia	Qty. 1
16. 8 th District	Stevens County – Morris	Qty. 1

17. 8 th District	Swift County – Benson	Qty. 1
18. 8 th District	Traverse County – Wheaton	Qty. 1
19. 8 th District	Wilkin County – Breckenridge	Qty. 1
20. 8 th District	District Administration Office – Willmar	Qty. 1
21. 9 th District	Crow Wing County – Brainerd	Qty. 3
22. 9 th District	Pennington County – Thief River Falls	Qty. 1
23. 9 th District	Polk County – Crookston	Qty. 2
24. 9 th District	Red Lake County – Red Lake Falls	Qty. 1
25. 9 th District	District Administration Office – Bemidji	Qty. 1

III. SUBMISSION REQUIREMENTS.

A. General Requirements.

1. **Certificate of Insurance.** Each proposal shall contain acceptable evidence of compliance with the workers' compensation coverage requirements of Minnesota Statute § 176.181, subd. 2. Vendor's RFP response must include one of the following: (1) a certificate of insurance, or (2) a written order from the Commissioner of Insurance exempting you from insuring your liability for compensation and permitting him to self-insure the liability, or (3) an affidavit certifying that you do not have employees and therefore are exempt pursuant to Minnesota Statutes §§ 176.011, subd. 10; 176.031; and 176.041. *See* Section XV of the sample State contract in Appendix IV for details on additional insurance requirements that must be provided on request of the State.
2. **Affirmative Action Certification.** If the vendor's proposal exceeds \$100,000.00, the RFP response must include a completed Affirmative Action Statement and Certificate of compliance, which are attached as Appendix II.
3. **Non-collusion Affirmation.** Vendor must complete the Affidavit of Non-collusion (Appendix III) and include it with its RFP response.
4. **Contract Terms.** The State's boilerplate service contract template is set forth in Appendix IV (contract). No work can be started until a contract, in the form approved by the State Court Administrator's Legal Counsel Division, has been signed by all necessary parties in accordance with state court procurement and contract policies. The template included in the appendix is a sample form.
 - a. The Vendor's RFP response must include the Vendor's standard licensing, nondisclosure, maintenance, services and billing/invoicing procedures. By submitting a response to this RFP, Vendor understands and agrees that

much of the language included in the State's attached boilerplate service contract reflects requirements of Minnesota law and may not be modified.

- b. Vendors requesting additions or exceptions to the State's boilerplate terms and conditions shall submit them with their response to the RFP. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the Vendor's ability to respond to the RFP or perform the contract. The State reserves the right to address requests for exceptions to its boilerplate terms and conditions with the highest scoring Vendor during contract negotiation.

B. Product/Service Submission Requirements

1. Pricing must be listed by base model (with description) plus itemized list of available add on features with individual pricing. Listed below are some of the desired features. Not every copier will have all of these features but provide pricing if available.
 - a. Copiers with a range of sizes. Starting with 25 copies per minute and going up to 95 copies per minute.
 - 1.) Stearns County is in need of two (2) large capacity high volume black and white copiers estimated at 95 copies per minute.
 - b. Copiers with copy/scan/fax/print capabilities.
 - c. Copiers that can copy/print/scan while receiving a fax (i.e. dual function).
 - d. Copiers that will produce a fax confirmation page upon completion.
 - e. Copiers that can be networked.
 - f. Copiers that can print in color and black and white.
 - g. Copiers with staple/sort/finishing capabilities.
 - h. Copiers with duplex capabilities.
 - i. Copiers with special modes to produce brochures, books and pamphlets.
 - j. Copiers with color scanning.
 - k. Copiers with scanning to e-mail capabilities.
 - l. Copiers with extra paper tray additions (including different paper sizes).
 - m. Copiers with envelope feeders.
 - n. Copiers with a minimum life expectancy of 7 years, if kept under a full maintenance agreement.
 - o. Copiers that are ISO 15408 certified.
2. Pricing must be submitted using the attached form (Appendix I). Provide price information for the base model, itemized pricing for additional features (may

include more than what is listed on the form) and itemized pricing for the service/supply program.

- 3 Pricing must include delivery of equipment and software, installation of equipment /accessories/software, network installation, removal of all waste material and initial training cost.
4. Vendor must provide service/supply programs and pricing for each copier model proposed. Such pricing must be expressed as a cost per impression. Each District and County may elect to lock into a maintenance agreement for a certain number of years that will be negotiated at contract time.
 - a. Supplies pricing shall include all parts, supplies and consumables with the exception of paper and staples.
 - b. Service pricing must include technician labor to diagnose any problems and install parts with the exception of paper, staples and toner.
 - c. Vendors must perform all preventative maintenance services at the manufacturer's suggested intervals.
5. The vendor must be able to provide service and repairs on a District wide basis. Please specify if you have the means to service the 7th District and/or the 8th District and/or the 9th District.
6. Service is to occur within four hours of request or less depending upon the location.
7. Vendors may allow equipment to be traded-in as part of the new copier agreement. The value for the trade-in will be negotiated by the vendor and the District on an individual basis. Any equipment that is traded-in will go through security measures to overwrite the hard drive.
8. Vendors are to submit product line warranty information.

IV. **PROPOSAL SUBMISSION DETAILS**

A. Proposal Timeline.

1. RFP Posted on State Website: July 28, 2014
2. Vendor Questions Due: August 4, 2014
3. Questions Answered by: August 6, 2014
4. Proposal Submission Deadline: August 11, 2014

B. Amendments. Any amendments to this RFP will be posted on the Judicial Branch website.

- C. Questions. Questions about this RFP must be submitted in writing via email and directly to the State's sole point of contact:

Wade Young
Ninth Judicial District Administration Office
Minnesota Judicial Branch
wade.young@courts.state.mn.us

All questions about this RFP must be submitted in writing via email to the State's sole point of contact identified in this paragraph no later than 4:00 pm CST on Monday, August 4, 2014. Other court personnel are not allowed to discuss the Request for Proposal with anyone, including responders, before the proposal submission deadline.

- D. Proposal and Submittal Address. Your proposal must be submitted in writing by 4:30 pm CST on Monday, August 11, 2014, in a sealed envelope to:

Wade Young
Ninth Judicial District Administration Office
Minnesota Judicial Branch
616 America Ave NW, Suite 250
Bemidji, MN 56601

The submission must include three (3) paper copies. No facsimile or electronic submissions will be accepted.

- E. Signatures. Your proposal must be signed by, in the case of an individual, by that individual, and in the case of an individual employed by a firm, by the individual and an individual authorized to bind the firm.
- F. Deadline, Opening. Proposals must be received no later than 4:30 pm CST on Monday, August 11, 2014. Proposals will be opened the following business day. Do not place any information in your proposal that you do not want revealed to the public. All documentation submitted with the proposal, including the proposal, will become the property of the State.
- G. Late Proposals. Late proposals will not be accepted.

V. PROPOSAL EVALUATION.

- A. The State will evaluate all complete proposals received by the deadline. Incomplete proposals, late proposals, or proposals sent to any other address will not be considered.

- B. The evaluation of all proposals shall be based upon deriving the “Best Value” for each County individually. The State may elect to go with one vendor per District or they may elect to allow each County to determine the vendor they would like to negotiate a contract with. Best Value means achieving an appropriate balance between price and other factors that are key to a particular procurement. A procurement that obtains a low price but does not include other necessary qualities and features of the desired product or service does not meet the Best Value criterion. The State may elect to negotiate the purchase on an individual County basis. Based on their needs, each County may determine which vendor offers the “best value”. Factors upon which the proposals will be judged include, but are not limited to, the following:
1. Cost estimate;
 2. Vendor’s ability to meet service needs;
 3. Vendor’s past performance by submitting at least three (3) client references;
 4. Product line security measures (hard drive overwrite/ISO 15408 certified);
 5. Product line warranty;
 6. Individual County’s needs; and
- C. The State reserves the right to determine, in its sole and absolute discretion, whether any aspect of a proposal satisfactorily meets the criteria established in this RFP.
- D. The State reserves the right to request additional information from Vendors during any phase of the proposal evaluation process.
- E. The State may elect not to award a contract solely on the basis of this RFP, and will not pay for the information solicited or obtained. The information obtained will be used in determining the alternative that best meets the needs of the State.

APPENDIX I

Vendor:	Date:
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Base Model		
Base Model:	Description of Base Model (provide the following):	Price:
	Print/Copy Speed:	
	Paper Capacity:	
	Document Feeder Capacity:	
	Type of Document Feed (Single/Dual):	
	Color/Black and White/Both Color and Black and White:	
	Scan Speed (images per minute):	
	Maximum Paper Size:	
	Scan-to Email (Yes/No-B&W/Color)	
	System Memory (size):	
	Hard Disk Drive (size):	
	Hard Drive Overwrite (Yes/No):	
	ISO 15408 Certified - CC (Yes/No):	
	Faxing (Yes/No):	
	Stapling/Capacity/Sheets:	
	Mailboxes for users (Yes/No):	
Encrypted PDF For Scan (Optional/Standard):		
Life Expectancy, if kept under a full maintenance agreement (# of years):		
Envelope Feeder (Yes/No):		

Additional Features		
Item Number	Item Description	Price
	2-way Paper Feed Cabinet	
	Large Capacity Unit	
	Large Capacity Unit - different paper sizes	
	Job Separator Tray	
	Stapling Finisher	
	Punch Kit	
	Fax Kit	
	Hard Drive Overwrite	
	Envelope Feeder	

Service/Supply Program	
Description	Price
Copier Service per Page-BW	
Copier Service per Page-Color	

* Please supply price for base model, supply itemized pricing for additional features and supply itemized pricing for service/supply program.

APPENDIX II

Affirmative Action Statement and Certification of Compliance (Must be submitted with Response)

STATE OF MINNESOTA - AFFIRMATIVE ACTION STATEMENT

If your response to the RFP is estimated to exceed \$100,000, you must complete the information requested:

BOX A:

1. Have you employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months?

YES NO

If your answer is “NO,” proceed to BOX B. If your answer is “YES,” **your response will be rejected unless your firm or business has a Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or has submitted an affirmative action plan** to the Commissioner of Human Rights for approval **by the time the responses are due** for any proposal estimated to exceed \$100,000.

2. Please check one of the following statements:

YES, we have a **current** Certificate of Compliance that has been issued by the State of Minnesota, Commissioner of Human Rights. (Include a copy of your certificate with your response.)

NO, we **do not have** a Certificate of Compliance; however, **we submitted an affirmative Action plan** to the Commissioner of Human Rights for approval on _____. The plan must be approved by the Commissioner of Human Rights before any designation or agreement can be executed.

NO, we **have not submitted** a plan. If your plan is not submitted by the time the responses are due, your response will be rejected.

NOTE: Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action plans approved by the federal government, a county, or a municipality must still be reviewed and approved by the Minnesota Department of Human Rights for a certificate to be issued.

BOX B:

1. Have you employed more than 40 full-time employees on a single working day during the previous 12 months in a state in which you have your primary place of business and that primary place of business is outside of the State of Minnesota, but inside the United States?

YES NO

If your answer is “NO,” proceed to BOX C. If your answer is “YES,” **the state cannot execute a designation with your firm or business unless it is in compliance with the Minnesota Human Rights certification requirements. It is the sole responsibility of the firm or business to apply for and obtain a human rights certification prior to execution of a designation as applicable.** You may achieve compliance with the Human Rights Act by having either a current Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or by certifying that you are in compliance with federal Affirmative Action requirements.

2. Please check one of the following statements:

YES, we have a current Certificate of Compliance issued by the Minnesota Department of Human Rights. (Include a copy of your certificate with your response.)

YES, we are in compliance with federal Affirmative Action requirements.

NO, we do not have a current Certificate of Compliance and we cannot certify that we are in compliance with federal Affirmative Action requirements.

BOX C:

1. If your answers to BOX A (Question 1) and Box B (Question 1) were “NO,” you are not subject to the Minnesota Human Rights Act certification requirement. Please, however, check one of the following:

NO, we have not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months and we have not employed more than 40 full-time employees on a single working day during the previous 12 months in the state in which our primary place of business is located.

We are a business with our primary place of business outside of the United States that has not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months.

For further information regarding Minnesota Human Rights requirements, contact the Department of Human Rights, Compliance Services, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651.296.5663; Toll Free: 800.657.3704; or TTY: 651.296.1283. For further information regarding federal Affirmative Action requirements, call 800.669.4000 or visit its web site at <http://www.eeoc.gov/>.

By signing this statement, the Proposer certifies that the information provided is accurate.

NAME OF FIRM: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

STATE OF MINNESOTA - AFFIRMATIVE ACTION CERTIFICATION OF COMPLIANCE

The Minnesota Human Rights Act (Minn. Stat. § 363.073) divides the designation compliance program into two categories. Both categories apply to any designations for goods or services in excess of \$100,000.

The first category applies to businesses that have had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months. The businesses in this category must have submitted an Affirmative Action plan to the Commissioner of the Department of Human Rights prior to the due date of the response and must have received a Certificate of Compliance prior to the execution of a designation.

The second category applies to businesses that have had more than 40 full-time employees on a single working day in the previous 12 months in the state in which they have their primary place of business. The businesses in this category must have either a current Certificate of Compliance previously issued by the Department of Human Rights or certify to the STATE that they are in compliance with federal Affirmative Action requirements before execution of a designation. For further information, contact the Department of Human Rights, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651-296-5663; Toll Free: 800-657-3704; or TTY: 651-296-1283.

Minnesota businesses must have a current Certificate of Compliance or submitted an affirmative action plan by the time proposals are due, or their proposal will be rejected.

The STATE is under no obligation to delay the execution of a designation until a business has completed the Human Rights certification process. It is the sole responsibility of the business to apply for and obtain a Human Rights certificate prior to execution of a designation, as applicable.

APPENDIX III

**STATE OF MINNESOTA
AFFIDAVIT OF NON-COLLUSION
(Must be submitted with Response)**

I swear (or affirm) under the penalty of perjury:

1. That I am the Proposer (if the Proposer is an individual), a partner in the company (if the Proposer is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal submitted in response to the _____ Request for Proposals has been arrived at by the Proposer independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Proposer of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent (including a partner) of the Proposer and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Proposer's Firm Name: _____

Authorized Signature: _____

Date: _____

APPENDIX IV

CONTRACT FOR SERVICES (non technology related)

THIS CONTRACT, and amendments and supplements thereto, is between State of Minnesota, acting through its _____, address _____ (hereinafter "STATE") and _____, an independent contractor, not an employee of the State of Minnesota, address _____ (hereinafter "CONTRACTOR"),

WHEREAS, the STATE, pursuant to Minnesota Statutes 2004, Section _____ is empowered to _____, and

WHEREAS, the STATE desires to _____ but lacks sufficient staff, and

WHEREAS, CONTRACTOR represents that it is duly qualified and willing to perform the services set forth herein.

NOW, THEREFORE, it is agreed:

I. **DUTIES.** CONTRACTOR, who is not a STATE employee, shall ..

II. **CONSIDERATION AND TERMS OF PAYMENT.**

A. **Consideration** for all services performed and goods or materials supplied by CONTRACTOR pursuant to this contract shall be paid by the STATE as follows:

1. Compensation: _____.
2. Reimbursement for travel and subsistence expenses actually and necessarily incurred by CONTRACTOR performance of this contract in an amount not to exceed _____ dollars (\$ _____); provided, that CONTRACTOR shall be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current Judicial Branch Policy on Employee Travel and Business Expense Reimbursement Procedure. CONTRACTOR shall not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval for such out of state travel from the STATE. The total obligation of the STATE for all compensation and reimbursements to CONTRACTOR shall not exceed _____ dollars (\$ _____).

B. **Terms of Payment.** Payments shall be made by the STATE promptly after CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized agent pursuant to Section VII. An invoice shall be submitted on _____ for billable costs incurred by the CONTRACTOR during the immediately preceding _____.

III. **TIME REQUIREMENTS.** CONTRACTOR shall comply with all of the time requirements described in this contract.

IV. **CONDITIONS OF PAYMENT.** All services provided by CONTRACTOR pursuant to this contract shall be performed to the satisfaction of the STATE, as determined at the sole discretion of its authorized representative, and in accord with the CONTRACTOR'S duties set forth in section I of this contract and all applicable federal, state, and local laws, ordinances, rules and regulations. CONTRACTOR shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation

of federal, state or local law, ordinance, rule or regulation.

- V. **TERMS OF CONTRACT.** This contract shall be effective on _____ and shall remain in effect until _____ or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. **CONTRACTOR UNDERSTANDS THAT NO WORK SHOULD BEGIN UNDER THIS CONTRACT UNTIL ALL REQUIRED SIGNATURES HAVE BEEN OBTAINED, AND THE STATE'S AUTHORIZED REPRESENTATIVE NOTIFIES CONTRACTOR TO BEGIN WORK.**
- VI. **CANCELLATION.**
- A. This contract may be cancelled by the STATE at any time, with or without cause, upon thirty (30) days' written notice to the other party. In the event of such a cancellation, CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
- B. The STATE may immediately cancel this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Cancellation must be by written or facsimile transmission notice to CONTRACTOR. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the contract is cancelled because of a decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide CONTRACTOR notice of the lack of funding within a reasonable time of the STATE'S receiving that notice.
- VII. **STATE'S AUTHORIZED REPRESENTATIVE.** The STATE'S Authorized Representative for the purposes of administration of this contract is _____. Such representative shall have final authority for acceptance of CONTRACTOR'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Section II (B).
- VIII. **ASSIGNMENT.** CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE.
- IX. **AMENDMENTS.** Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.
- X. **LIABILITY.** CONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorneys' fees incurred by the STATE, arising from the performance of this contract by CONTRACTOR or CONTRACTOR'S agents or employees. This clause shall not be construed to bar any legal remedies CONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to this contract.
- XI. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor for a minimum period of six (6) years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.
- XII. **CONFIDENTIALITY, DISCLOSURE AND USE.** CONTRACTOR shall not disclose to any third party any information that is both: (A) made available by the STATE or its agents to CONTRACTOR in order to permit CONTRACTOR to perform hereunder or is created, gathered, generated or acquired in accordance with this contract; and (B) inaccessible to the public pursuant to 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. If the CONTRACTOR receives a request to release the information referred to in this Clause, the CONTRACTOR must immediately notify the STATE. The STATE will give the CONTRACTOR instructions concerning the release of the information to the requesting party before the information is released.

XIII. RIGHTS IN AND TO INFORMATION, INVENTIONS, AND MATERIALS.

- A. The STATE shall own all rights, title and interest in all of the materials conceived or created by the CONTRACTOR, or its employees or subcontractors either individually or jointly with others and which arise out of the performance of this contract, including any report, study, computer software, database, model, invention, photograph, negative, audio or video recording, or other item or documents (hereafter "MATERIALS"). CONTRACTOR hereby assigns to the STATE all rights, title and interest to the MATERIALS. CONTRACTOR shall, upon request of the STATE, execute all papers and perform all other acts necessary to assist the STATE to obtain and register copyrights, patents or other forms of protection provided by law for the MATERIALS. The MATERIALS created by CONTRACTOR, its employees or subcontractors, individually or jointly with others shall be considered "works made for hire" as defined by the United States Copyright Act. CONTRACTOR shall remit all of the MATERIALS to the STATE upon completion, termination or cancellation of this contract. CONTRACTOR, its employees and subcontractors shall not copy, reproduce, allow or cause to have the MATERIALS copied or reproduced or used for any purpose other than the performance of the CONTRACTOR'S obligations under this contract without the written permission of the STATE'S authorized representative. Nothing in this Article shall be construed to limit the CONTRACTOR'S obligation to comply with Article XI of this contract.
- B. CONTRACTOR represents and warrants that MATERIALS produced or used under this contract do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. Without limiting section X, CONTRACTOR shall indemnify and defend the STATE at 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 MATERIALS infringe upon the intellectual property rights of another. CONTRACTOR shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including, but not limited to, reasonable attorney fees arising out of this contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in CONTRACTOR'S or the STATE'S opinion is likely to arise, CONTRACTOR shall, at the STATE'S discretion, either procure for the STATE the right or license to continue using the MATERIALS at issue or replace or modify the allegedly infringing MATERIALS. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

XIV. AFFIRMATIVE ACTION.

- A. **Covered Contracts and Contractors.** If this contract exceeds \$100,000 and CONTRACTOR employed more than forty (40) full-time employees on a single working day during the previous twelve months in Minnesota or in the state where it has its principle place of business, then CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than forty (40) full-time employees in another state that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
- B. **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner

of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

C. Minn. R. Parts 5000.3400-5000.3600 provide:

1. **General.** Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
2. **Disabled Workers.** The contractor must comply with the following affirmative action requirements for disabled workers:
 - a. The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - b. The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - e. The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

D. **Consequences.** The consequences for a 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.

E. **Certification.** CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 (including, where applicable, federal affirmative action requirements) and is aware of the consequences for non-compliance.

XV. **WORKERS' COMPENSATION.** In accordance with the provisions of Minnesota Statutes, Section 176.182, as enacted, the CONTRACTOR shall provide acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, subdivision 2, as enacted, prior to commencement of any duties to be performed under this contract.

XVI. **ANTITRUST.** CONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

XVII. **OTHER PROVISIONS.**

A. **Warranties.**

1. **Original Works.** In performing its obligations hereunder, CONTRACTOR will not use or incorporate any trade secret information or copyrighted works of authorship of CONTRACTOR or of any third party, and except for components already in the public domain, all software, documentation, information and other materials provided or furnished by CONTRACTOR in performing the duties under this contract will be original and will not violate or infringe upon the rights of any third party.
2. **Professional Services.** CONTRACTOR represents and warrants to the STATE that it has the proper training, skill and background so as to be able to perform all services required of CONTRACTOR pursuant to this contract in a competent and professional manner, and all such work shall be of professional quality.
3. **Mutual Representations and Warranties.** CONTRACTOR and the STATE each represent and warrant to the other that: a) it has the full right, power and authority to enter into this contract and to perform fully all of its obligations hereunder; b) it is free of any obligation or restriction that would prevent it from entering into this contract or from performing fully any of its obligations hereunder; and c) it has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this contract.

B. **Injunctive Relief.** Without limiting section X, CONTRACTOR acknowledges that the STATE will be irreparably harmed if CONTRACTOR'S obligations under sections XII and XIII of this contract are not specifically enforced and that the STATE would not have an adequate remedy at law in the event of an actual or threatened violation by CONTRACTOR of its obligations. Therefore, CONTRACTOR agrees that the STATE shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violation or breach by CONTRACTOR without the necessity of the STATE showing actual damages or that monetary damages would not afford an adequate remedy. CONTRACTOR shall be liable to the STATE for reasonable attorney's fees incurred by the STATE in obtaining any relief pursuant to this section.

- C. **Relationship of the Parties.** CONTRACTOR is an independent contractor and shall not be deemed for any purpose to be an employee of the STATE.
1. Within the Scope of Work, Independent Contractor shall retain sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this contract. CONTRACTOR may conduct other business unrelated to this contract during the term of this contract as long as it does not affect in any significant way CONTRACTOR'S performance under this contract and CONTRACTOR's compliance with all other terms and conditions of this contract.
 2. CONTRACTOR understands and agrees that the STATE is not withholding any taxes from the fees paid to CONTRACTOR pursuant to this contract and that CONTRACTOR is solely responsible for any taxes and other amounts to be paid as a result of the fees paid to CONTRACTOR pursuant to this contract. Without limiting section X, CONTRACTOR will indemnify the STATE for any damages or expenses, including attorney's fees, and legal expenses, incurred by the STATE as a result of CONTRACTOR's failure to pay any such taxes or other amounts. At the STATE's request, CONTRACTOR shall provide proof of payment of any such required taxes or other amounts.
 3. CONTRACTOR will pay interest on late payments to its permitted subcontractors as specified in Minn. Stat. § 16A.1245.
 4. This contract shall not be considered or construed to be a partnership or joint venture. Neither CONTRACTOR nor the STATE shall have the right or the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.
 5. CONTRACTOR hereby waives and foregoes the right to receive any benefits given by the STATE to its regular employees, including, but not limited to, health benefits and vacation and sick leave benefits. CONTRACTOR agrees that if any government agency or court of law claims that CONTRACTOR is an employee, CONTRACTOR agrees that CONTRACTOR is not covered under these plans. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the CONTRACTOR by virtue of CONTRACTOR's services to the STATE, and is effective for the entire duration of this contract. This waiver is effective independently of CONTRACTOR's employment status as adjudged for taxation purposes or for any other purpose.
- D. **Consent to Release of Certain Data.** Under Minn. Stat. § 270C.65 and other applicable law, CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the STATE, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring CONTRACTOR to file state tax returns and pay delinquent state tax liabilities, if any.
- E. **Publicity.** Any publicity regarding the subject matter of this contract must identify the STATE as the sponsoring agency and must not be released without the prior written approval from the STATE'S Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for CONTRACTOR individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

- F. **Endorsement.** CONTRACTOR must not claim that the STATE endorses its products or services.
- G. **Notices.** Any written notice hereunder shall be deemed to have been received when: (A) personally delivered; (B) sent by confirmed facsimile transmission or telegram; (C) sent by commercial overnight courier with written verification of receipt; or (D) seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at: (1) the address first set forth herein, if to CONTRACTOR; (2) at the address first set forth herein, if to the STATE, with a copy to Legal Counsel Division, 140 Minnesota Judicial Center, 25 Rev. Martin Luther King, Jr. Blvd, St. Paul, MN 55155; or (3) at such other address of which written notice has been given in accordance herewith.
- H. **Non-Exclusivity.** This contract shall not preclude CONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under this contract; provided, however, that such materials prepared by CONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as precluding or limiting in any way the right of CONTRACTOR to provide services of any kind to any person or entity as CONTRACTOR in its sole discretion deems appropriate.
- I. **Facilities and Use Conditions.** Without limiting CONTRACTOR's responsibilities under any other section of this contract, to the extent that CONTRACTOR utilizes STATE provided on-site facilities (including, but not limited to, computers, desks, Internet connections, etc.) to perform CONTRACTOR's duties under this contract, CONTRACTOR must comply with all policies of the STATE and the Minnesota judicial branch as they relate to the acceptable use or operation of STATE facilities, including, without limitation, the Minnesota State Court System Policies on the Use of the Internet and Other Electronic Communication Tools and Drug Free Workplaces the same may be amended and replaced from time to time
- J. **Miscellaneous.**
1. The provisions of sections VII, X, XI, XII, XIII, XVI, and XVII shall survive any cancellation or termination of this contract as shall any other provisions which by their nature would be intended or expected to survive such cancellation or termination.
 2. The failure by either Party at any time to enforce any of the provisions of this contract or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this contract. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
 3. This contract shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the State of Minnesota, without regard to Minnesota's choice of law provisions. Any action arising out of or relating to this contract, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. CONTRACTOR hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.
 4. Every provision of this contract shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this contract so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this contract, and all other provisions shall remain in full force and effect.

5. This contract sets forth the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter; provided that all terms and conditions of all preexisting contracts or agreements between the parties shall continue in full force and effect except as supplemented or modified by this contract. In the event of any inconsistency or conflict between the terms of this contract and any other agreement between the parties, the terms of this contract shall govern.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

1. CONTRACTOR:

CONTRACTOR certifies that the appropriate persons have executed the contract on behalf of CONTRACTOR as required by applicable articles, by-laws, resolutions or ordinances. (If a corporation with more than one individual serving as corporate officer, two corporate officers must execute)

<i>By</i>
<i>Title</i>
<i>Date</i>

<i>By</i>
<i>Title</i>
<i>Date</i>

(reserved)

(reserved)

2. STATE:

Person signing certifies that applicable procurement policies have been followed. Where contract and amendments exceed \$50,000, signature of State Court Administrator or her/his Deputy is also required.

<i>By</i>
<i>Title</i>
<i>Date</i>

<i>By</i>
<i>Date</i>

3. Funds have been encumbered as required by State Court Finance Policy by:

<i>By</i>
<i>Date</i>
<i>Contract No.</i> _____
<i>Purchase Order No.</i> _____

4. Approved as to form and execution for STATE by:

<i>By</i>
<i>Date</i>