TERMS AND CONDITIONS

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Requirements

a. By submitting a response to the Request for Proposal (RFP), vendor accepts the standard terms and conditions, if a contract result. Much of the language included in the standard terms and conditions reflects the requirements of Minnesota law.

b. Vendors requesting deviations from and exceptions to these Terms and Conditions, specifications, or the manner of this RFP must describe in detail, signed, and attached to the proposal submittal. A request must be accompanied by and 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. In the absence of such statement, Vendor will be deemed to have accepted all such Terms and Conditions, specifications, and the manner of the RFP. Vendor acknowledges that failure to raise an issue related to the Terms and Conditions, specifications, or manner of this RFP prior to the proposal submission deadline in the manner described constitutes a full and final waiver of that Vendor’s right to raise the issue later in any action or proceeding relating to this RFP. Minnesota State reserves the right to address nonmaterial requests for exceptions to the standard terms and conditions and contract language with the highest-scoring Vendor during contract negotiation.

Parties to the Contract

Parties to the contract(s) entered into as a result of this RFP will be the “State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities (Minnesota State)” and the successful Vendor(s).

Prohibited Pre-Payment

Minnesota Statutes § 16A.41, subd. 1, prohibits Minnesota State from paying in advance, except under the limited circumstances described in Minn. Stat. § 16A.065.
Nonresident Aliens Taxes

Pursuant to 26 U.S.C. §1441, Minnesota State is required to withhold certain federal income taxes on the gross compensation paid to nonresident aliens, as defined by Internal Revenue Code §7701(b). Minnesota State will withhold all required taxes unless and until Vendor submits documentation required by the Internal Revenue Service indicating that Vendor is a resident of a country with tax treaty benefits. Minnesota State makes no representations regarding whether or to what extent tax treaty benefits are available to Vendor. To the extent that Minnesota State does not withhold these taxes for any reason, Vendor agrees to indemnify and hold Minnesota State harmless for any taxes owed and any interest or penalties assessed.

Entertainer Taxes

Pursuant to Minnesota Statutes 290.9201, Minnesota State is required to withhold a two percent (2%) tax on the gross compensation, including reimbursable expenses, paid to non-Minnesota entertainers for any performance in Minnesota.

Reimbursements

Reimbursement for travel and subsistence expenses actually and necessarily incurred by Vendor as a result of the contract will be in no greater amount than provided in the current "Commissioner’s Plan” promulgated by the Commissioner of Minnesota Management & Budget, available in Buyer Attachments section. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless Vendor has received prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

Contract Termination

Minnesota State may cancel the contract(s) entered into as a result of this RFP upon 30 days written notice, with or without cause.

Termination for Insufficient Funding

Minnesota State may immediately terminate the contract(s) entered into as a result of this RFP, without penalty, 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.
Liability

Vendor shall indemnify, save, and hold Minnesota State, its representatives and employees harmless from any and all claims or causes of action, including all attorney’s fees incurred by Minnesota State arising from the performance of the contract(s) by Vendor or Vendor’s agents or employees, entered into as a result of this RFP.

Governing Law

A contract(s) entered into as a result of this RFP, and any amendments and supplements thereto, entered into as a result of this RFP will be governed and interpreted under the laws of the State of Minnesota.

Venue and Jurisdiction

Venue for all legal proceedings arising out of the resulting contract(s), or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

Contract Assignment

A contract or any part hereof entered into as a result of this RFP may not be assigned, sublet, subcontracted, or transferred directly or indirectly without prior written consent of Minnesota State.

Amendments

Any amendments to the resulting contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.

Required Data Collection and Disclosure

As a condition of the contract(s) entered into as a result of this RFP, Vendor(s) will be required by Minn. Stat. §270C.65 to provide a social security number, a federal tax identification number or Minnesota tax identification number. This information may be used in the enforcement of federal and state tax laws. These numbers will be available to federal and state tax authorities and state personnel involved in approving the contract and the payment of state obligations. Supplying these numbers could result in action to require Vendor to file state tax returns and pay
delinquent state tax liabilities. The resulting contract will not be approved unless these numbers are provided.

If you are an independent contractor, Minn. Stat. §256.998 requires the state to report your name, address and social security number to the New Hire Reporting Center of the Minnesota Department of Human Services unless your contract is for less than two months in duration with gross earnings of less than $250.00 per month. This information may be used by state or local child support enforcement authorities in the enforcement of state and federal child support laws.

**Workers’ Compensation**

The Vendor will certify it is in compliance with Minnesota Statutes §176.181, subd. 2 pertaining to workers’ compensation insurance coverage. The Vendor’s employees and agents will not be considered Minnesota State employees. Any claims that may arise under the Minnesota Workers’ Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way Minnesota State’s obligation or responsibility.

**State Audit**

The books, records, documents and accounting practices and procedures of Vendor relevant to the resulting contract(s) must be available for audit purposes to Minnesota State and the Legislative Auditor’s Office for a minimum of six (6) years after the termination/expiration of the contract.

**Minnesota Government Data Practices Act**

The requirements of Minnesota Statutes § 13.05, subd. 11 will apply to the contract(s) entered into as a result of this RFP. Vendor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by Minnesota State in accordance with the contract and as it applies to all data created, gathered, generated, or acquired in accordance with the resulting contract.

All materials submitted in response to this RFP will become property of Minnesota State and will become public record after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when Minnesota State has completed negotiating the contract with the selected Vendor. If Vendor submits information in response to this RFP that it believes to be trade secret materials as defined by the Minnesota Government Data Practices Act, Vendor must:

- Mark clearly all trade secret materials in its response at the time the response is submitted;
• Include a statement with its response justifying the trade secret designation for each item;
• Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State of Minnesota, Minnesota State Colleges and Universities, its agents and employees, from any judgments or damages awarded against the State or Minnesota State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the award of a contract. In submitting a response to this RFP, the Vendor agrees this indemnification survives as long as the trade secret materials are in possession of Minnesota State.

Minnesota State will not consider the prices submitted by the Vendor or contract documents proposed by the Vendor to be proprietary or trade secret materials.

**FERPA School Official Requirement**

In the event the contract(s) entered into as a result of this RFP allows the selected Vendor(s) access to any private student data, the selected Vendor(s) agree to be designated a “school official” with “legitimate educational interests” in Minnesota State’s data, as those terms have been defined under the Family Educational Rights and Privacy Act (“FERPA”) and its implementing regulations, and Vendor will agree to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. The selected Vendor will agree to use Minnesota State’s data only for the purpose of fulfilling its duties under the resulting contract or for Minnesota State’s benefit, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by Minnesota State.

**Health Insurance Portability and Accountability Act (HIPAA)**

Vendor shall comply with the Health Insurance Portability and Accountability Act of 1996, (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws and regulations. If applicable, Vendor will sign a Business Associate Agreement with the School.

**Ownership of Materials and Intellectual Property Rights**

a. Minnesota State shall own all rights, title and interest in all of the materials conceived or created by the Vendor, or its employees or subcontractors, either individually or jointly with others and which arise out of the performance of the resulting contract, or were created and paid for under the resulting contract, including any inventions, reports,
studies, designs, drawings, specifications, notes, documents, software and
documentation, computer based training modules, electronically, magnetically or
digitally recorded material, and other work in whatever form (hereinafter “Materials”).
The Vendor shall assign Minnesota State all rights, title and interest to the Materials.
The Vendor shall, upon request of Minnesota State, execute all papers and perform all
other acts necessary to assist Minnesota State to obtain and register copyrights, patents
or other forms of protection provided by law for the Materials. The Materials created
under the resulting contract by the Vendor, its employees or subcontractors,
individually or jointly with others, shall be considered “works made for hire” as defined
by the United States Copyright Act. All of the Materials, whether in paper, electronic, or
other form, shall be remitted to Minnesota State by the Vendor, its employees and any
subcontractors, and the Vendor shall not copy, reproduce, allow or cause to have the
Materials copied, reproduced or used for any purpose other than performance of the
Vendor’s obligations under this contract without the prior written consent of Minnesota
State’s authorized representative.

b. The Vendor shall warrant that Materials produced or used under the resulting 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. The Vendor shall indemnify and defend, to the extent permitted by the
Attorney General, Minnesota State at the Vendor’s expense from any action or claim
brought against Minnesota 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. The Vendor
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 the Vendor’s
or Minnesota State’s opinion is likely to arise, the Vendor shall, Minnesota State’s
discretion, either procure for Minnesota 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.

Accessibility

If the resulting contract includes any end-user-facing human interface, such as an end-user device
software component or web site form, file upload system, etc. Vendor shall warrant that the
products or services to be provided under the resulting contract comply with the accessibility
guidelines of Section 508 of the Rehabilitation Act of 1973 as amended, and the Web Content
Accessibility Guidelines (WCAG) 2.0.

If the resulting contract includes any end-user-facing human interface, such as an end-user
device software component, web pages or site, video or audio playback, file upload system,
mobile device components, etc., Vendor agrees to promptly respond to and resolve any
complaint regarding accessibility of its products or services which is brought to its attention and
Vendor further agrees to indemnify and hold harmless Minnesota State from any claim arising out of its failure to comply with the aforesaid requirements.

Minnesota State, at its discretion, may at any time test Vendor’s products or services covered by the resulting contract to ensure compliance with Section 508 and WCAG 2.0. Testing that results in findings of non-compliance, will result in a 25% reduction in the total cost of the products and/or services covered by the resulting contract if the non-compliance is not corrected within 30 days of being reported to Vendor in writing. All withheld amounts will be paid to Vendor upon correction of the non-compliance and acceptance by Minnesota State. Said acceptance not to be unreasonably withheld.

Failure to comply with these requirements will constitute a breach and be grounds for termination of this resulting contract and a pro-rated refund of fees paid from Minnesota State for the remainder of original contract period.

Physical and Data Security

In the event the contract(s) entered into as a result of this RFP allows the selected Vendor(s) access to any nonpublic data as defined in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (“Minnesota State Data”), Vendor agrees to the following terms:

a. Vendor will comply with all applicable state, federal and local laws and regulations, including but not limited to the laws under Minnesota Statute Chapters 13 relating to confidentiality of information received as a result of the contract and will protect such data using commercially-acceptable standards, no less rigorously than it protects its own confidential information. Vendor agrees that it, its officers, employees, and agents will be bound by such confidentiality laws and that it will establish procedures for safeguarding the information. Vendor agrees to notify its officers, employees, and agents of the requirements of confidentiality and of the possible penalties imposed by violation of these laws. Vendor agrees that neither it, nor its officers, employees or agents will disclose or make public any information received by Vendor on behalf of Minnesota State.

b. Vendor must recognize Minnesota State’s sole and exclusive right to control the use of Minnesota State Data. Vendor further agrees it will make no use of any of the described information, for either internal or external purposes, other than that which is directly related to the performance of the contract.

c. Vendor agrees it will indemnify and hold harmless the State of Minnesota and Minnesota State from any and all liabilities and claims resulting from the unauthorized disclosure by Vendor, its officers, employees or agents of any information required to be held confidential under the provisions of the contract(s) entered into as a result of this RFP. Vendor must return all source data to the “Authorized Representative” to be identified in the resulting contract.
d. Network Security. To the extent applicable to Vendor’s performance under the Agreement, Vendor agrees at all times to maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, regular third-party penetration testing and vulnerability scanning. Vendor will ensure that such security measures are regularly reviewed and revised to address evolving threats and vulnerabilities.

e. Patching: Vendor agrees to maintain secure environments that are patched and up-to-date with all appropriate security updates no less than the standards set forth in Operating Instructions 5.23.1.5.

f. Data Encryption. Vendor agrees to encrypt all data in transit and implement security controls to protect data at rest using commercially reasonable and industry accepted measures such as encryption.

g. Application Security. Vendor agrees to use industry standard practices (including regular static and dynamic scanning) at all times to provide, maintain and support its offering with subsequent updates, upgrades, and bug fixes such that Vendor’s offering is, and remains secure from those vulnerabilities as described in:

- The Open Web Application Security Project’s (OWASP) “Top Ten Project” and
- The CWE/SANS Top 25 Programming Errors and
- Other generally recognized and comparable industry practices or standards.

h. Password Protection: Vendor agrees that any device or computer that resides at any Minnesota State facility, has access to a Minnesota State network, or stores any non-public data is equipped with strong and secure password protection in compliance with Operating Instructions 5.23.1.1;

i. Data Re-Use: Vendor agrees that any and all data exchanged will be used expressly and solely for the purpose enumerated in the Agreement. Minnesota State Data will not be distributed, repurposed or shaped across other applications, environments, or business units of Vendor. Vendor further agrees that no Minnesota State Data of any kind will be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by Minnesota State.

j. Data Return or Destruction: Vendor agrees that, upon completion, termination, or cancellation of the Agreement, all Minnesota State Data will be remitted, without charge, in a mutually agreeable format and media, to Minnesota State. The foregoing sentence does not apply if Minnesota State’s Chief Information Security Officer or delegate authorizes in writing Vendor to erase, destroy, and render unreadable the data and Vendor certifies in writing that these actions have been completed within thirty (30) days of the termination of the Agreement or within seven (7) days of the request of an agent of Minnesota State, whichever comes first; and

k. Reporting of Suspected and Actual Breaches. For this and following subsections, “breach” has the meaning given to it under the applicable Minnesota (Minn. Stat. § 13.055 Subd. 1(a)) or federal law. Immediately upon discovery of confirmed or suspected breach of Minnesota State Data, Vendor will notify Minnesota State by
telephone and email. In no event will the report be made more than one (1) business day after Vendor knows or reasonably suspects a breach has or may have occurred. In the event of a suspected breach, Vendor will Minnesota State informed regularly of the progress of its investigation until the uncertainty is resolved.

I. Costs Arising from Breach. In the event of a breach by Vendor or its staff, or any other event requiring notification under applicable law, Vendor agrees to promptly reimburse all costs to Minnesota State arising from such breach, including but not limited to costs of notification of individuals, establishing and operating call center(s), credit monitoring and/or identity restoration services, time of Minnesota State personnel responding to the breach, civil or criminal penalties levied against Minnesota State, attorney’s fees, court costs, etc. Any breach may be grounds for immediate termination of the resulting contract by Minnesota State.

**Payment Card Industry Data Security**

If the resulting contract involves the storage, processing, or transmittal of payment card data, Vendor agrees to establish security procedures to protect cardholder data and comply with the Payment Card Industry Data Security Standards (PCI DSS). Vendor agrees to notify Minnesota State within 30 days if either Vendor establishes that it is not PCI-compliant or Vendor is notified by a Qualified Security Assessor or Vendor’s acquiring bank that Vendor is not PCI-compliant. Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of cardholder data. In the event of a breach of any of Vendor’s security obligations or other event requiring notification under applicable law, Vendor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend Minnesota State and its trustees, officers, and employees from and against any claims, damages, or other harm related to such a breach. Vendor agrees to notify Minnesota State’s authorized representative within 24 hours in the event of unauthorized release of cardholder data.

**Publicity**

Any publicity given to the program, publications, or services provided by the Vendor from any resulting contract, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor or its employees individually or jointly with others, or any subcontractors shall identify Minnesota State as the sponsoring agency and shall not be released prior to receiving the approval of Minnesota State’s authorized representative.
COVID-19 Vaccination/Testing Requirements

a. Applicability. This section applies to vendors, contractors, or subcontractors who are performing contracted work in the following types of project settings: indoors with regular in-person contact with Minnesota State employees, students, or members of the public; and outdoor with substantial an/or regular in-person, non-socially distanced with Minnesota State employees, students, or members of the public (“Covered Individuals”).

b. 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.

c. Compliance. Vendors are responsible for the following:
   i. Tracking and maintaining proof of vaccination status for vaccinated Covered Individuals;
   ii. Ensuring Covered Individuals who are not vaccinated are tested on a weekly basis;
   iii. Monitoring test results and ensuring that Covered Individuals with positive test results do not access Minnesota State workplace to perform contractual services until the Covered Individual has been medically cleared; and
   iv. 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 the requirements above.

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

Workforce Certificates of Compliance and Human Rights Requirements

For all contracts, including renewals, estimated to be in excess of $100,000, all responding Vendors are required to complete the Human Rights Certification Information and Workforce Certificate and submit it with the response. As required by Minnesota Rule 5000.3600, "It is hereby agreed between the parties that Minnesota Statutes §363A.36 and Minnesota Rule 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it.” Copies of Minnesota Statutes §363A.36 and Minnesota Rules 5000.3400 - 5000.3600 are available at the Office of the Revisor of Statutes. All responding Vendors shall comply with the applicable provisions of the Minnesota Human Rights law, Minnesota Statutes §363.A36. Failure to comply is grounds for rejection of the Vendor’s proposal.
Equal Pay Certificate Application

If the response to this solicitation could be in excess of $500,000, including renewal and extension options, the Vendor must obtain a Certificate of Equal Pay Application from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A vendor is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months.

Please contact MDHR with questions at:
651-539-1100 (metro)
1-800-657-3704 (toll free)
711 or 1-800-627-3529 (MN Relay)
compliance.MDHR@state.mn.us

Preference to TG/ED/VO Businesses and Individuals

Register to become certificated or for information regarding certification, contact the OEP at 651-201-2402 or you may reach the Helpline by e-mail at procurement.equity@state.mn.us. For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529. Eligible TG/ED/VO businesses must be currently certified by the Minnesota Department of Administration’s Office of Equity in Procurement (OEP) prior to the solicitation opening date and time.

Targeted Group

In accordance with Minnesota Rules, part 1230.1810, Subpart B. A certified Targeted Group may be awarded up to a six percent preference as prime vendor in the amount offered over the lowest responsible offer from another vendor. The preference in the evaluation of the final cost proposal.

Economically Disadvantaged (ED) Business and Individuals

In accordance with Minnesota Rules, part 1230.1810, Subpart B. A certified Economically Disadvantaged may be awarded up to a six percent preference as prime vendor in the amount offered over the lowest responsible offer from another vendor. The preference in the evaluation of the final cost proposal.

Veteran-Owned (VO)

In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent (6%) preference to the final cost proposal, but no less than the percentage awarded to
any other group under this section on state procurement to certified small businesses that are majority-owned and operated by veterans.