

NASPO ValuePoint
PARTICIPATING ADDENDUM



CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

Master Agreement #: AR2485

MN Contract #: 196206

Contractor: INSIGHT PUBLIC SECTOR, INC.

Participating Entity: STATE OF MINNESOTA

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. Scope: This Participating Addendum (also "PA", "Contract" or "Addendum") covers **Cloud Solutions**, as available from Insight Public Sector, Inc. ("Contract Vendor"), led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Effective Date and Contract Period: This Contract shall be effective on July 1, 2021, or on the date of contract execution, whichever is later, to June 30, 2023, or 24 months after the date of contract execution, with the option to extend up to final expiration of the Master Agreement., or upon termination of the Contract or the Master Contract for any reason, whichever is sooner.
3. Participation: The NASPO ValuePoint Master Agreement ("Master Contract") may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Minnesota. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
4. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.
5. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Brittany Dunaway
Address:	6820 S. Harl Ave.
Telephone:	480-366-7027
Fax:	480-760-9488
Email:	SLEDContracts@insight.com

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Participating Entity

Name:	Matt Hassenstab
Address:	50 Sherburne Ave. Saint Paul, MN 55155
Telephone:	651-201-2431
Fax:	
Email:	Matt.Hassenstab@State.mn.us

6. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER
AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

Orders:

- a. Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement, as modified by this Contract or supplemented by (i) an Ordering Document signed by the parties; and/or (ii) a duly executed contract or agreement that applies to such order. The PA is not a purchase order, nor does it guarantee any purchases will be made.

b. Governing Law and Jurisdiction:

This Addendum is governed by the substantive and procedural laws of Minnesota and both Parties agree to submit to the exclusive jurisdiction of, and venue in, the state or federal courts with competent jurisdiction in Ramsey County, Minnesota, without regard to its choice-of-law provisions.

c. Joint Venture And Subcontracting.

The State does not preclude joint ventures or subcontracting among groups of vendors in providing services for this Contract. However, the Contract Vendor must submit an affidavit on behalf of all the others in the group as proof of the legally responsible party among the members of the group.

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After the effective date of the Contract, the Contract Vendor shall not, without prior written approval of the State, subcontract for the performance of any of the Contract Vendor's obligations that were not already approved for subcontracting when the Contract was awarded.

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

The following subcontractors have been identified by the Contract Vendor and approved by the State to perform certain Contract Vendor obligations as identified below:

Subcontractor Name, Primary Contact and Address	Proposed Scope of Services

During this Contract, if an approved subcontractor is determined to be performing unsatisfactorily by the State, the State reserves the right to withdraw its prior authorization and provide Contract Vendor with written notification that the subcontractor can no longer be used to perform work under this Contract.

i. Subcontractor Payment

In accordance with Minn. Stat. § 16A.1245, the Contract Vendor shall, within 10 days of receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contract Vendor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontractor that takes civil action against the Contract Vendor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contract Vendor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under the Contract. In the event the Contract Vendor fails to make timely payments to a subcontractor or supplier, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contract Vendor and deduct

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said payment from any remaining amounts due the Contract Vendor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contract Vendor written notice that payment will be made directly to a subcontractor or supplier. If there are no remaining outstanding payments to the Contract Vendor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

j. Authorized Signature

The Contract must be fully and properly executed by an officer or other authorized representative of the responder. If the responder is a corporation, a secretarial certificate or the corporate minutes showing that the signing officer has authority to contractually obligate the corporation should be furnished. Where the corporation has designated an attorney-in-fact, the power of attorney form should be furnished. If the responder is a partnership, a letter of authorization should be furnished signed by one of the general partners. A sole proprietor must sign the response. Proof of authority of the person signing the response must be furnished upon request.

k. Order of Precedence and Effect of Additional Documents

(1) Between State and Contract Vendor

The order of precedence between the Participating Addendum, the Master Contract and other applicable documents is as set forth in Attachment A, Section 1(a) of the Master Contract. For clarification, the terms "Order" or "Ordering Document" may also apply to a separate Statement of Work or other agreement agreed upon in writing and signed by the parties in conjunction with the purchase of cloud services or related professional services.

(2) Effect of Service Provider Terms and Conditions

If the State has separately negotiated terms with a Service Provider relating to the State's use or Service Provider's provision of service(s) ("Service Provider Terms"), those terms shall apply as between State and Service Provider and completely prevail over default terms offered by Service Provider either directly or through Insight.

The State shall not be deemed to have agreed to any default Service Provider terms and conditions prior to placing an Order for a particular product and/or service. Upon placement of an Order for a particular product or service, if the State and Service Provider do not have a duly executed agreement in place that governs the particular product or service, the State may choose to negotiate an appropriate agreement with the Service Provider

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or may elect to accept the default terms and conditions. Default terms and conditions may be agreed to by the State only to the extent not in conflict with Minnesota law and only to the extent not in conflict with the Master Agreement, this Participating Addendum or other written agreements between the parties.

Any agreement made in writing between the State and the Contractor or between the State and the applicable Service Provider may be incorporated as an Exhibit to this Contract if so desired by any Party.

In the event that certain remedies, including those contained in Service Provider's Service Level Agreements, are not available directly to the State by the nature of the contractual arrangements between the parties, Contract Vendor will facilitate and work with the Service Provider on the State's behalf to obtain any credits and remedies available under such Service Level Agreements, warranties, etc., and will provide any credits or remedies so obtained to the State.

(3) Miscellaneous

In the event that any provision of this Contract or NASPO Contract Number AR2485 or a Contract Vendor ordering document or Statement of Work is contrary to Minnesota law, such provision shall be null and void. This Contract shall be governed by Minnesota law.

The NASPO ValuePoint Solicitation CH16012 for Cloud Solutions 2016-2026 and Contractor's response to this Solicitation (as incorporated into the Master Contract) may be used to inform the scope of the Agreement and the Contract.

The terms of the Contract, the Master Contract and other duly executed agreements between the State and Insight Public Sector, Inc shall be read as cumulative and complimentary to the extent possible, with direct conflicts resolved in favor of the Contract.

For clarification, all Professional Services provided under this Contract shall be governed by the Contract in accordance with the Order of Precedence stated above, unless expressly agreed otherwise in writing between the parties.

I. Price Escalations

No price escalations are allowed unless approved by the Lead State for the NASPO Contract and adopted by the State of Minnesota through a fully executed amendment to this Contract. Price reductions resulting from the host provider's

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price schedule are effective upon notification of the price reduction to the NASPO Master Contract Administrator.

m. Minnesota Exhibits

The terms and conditions of Minnesota Exhibit A and any additional Exhibits, which are attached and incorporated into this Contract, modify and supplement the Master Agreement.

n. Minimum Discounts

Pricing shall be no more than that made available through the Master Contract. The State reserves the right to negotiate lower prices or greater discounts either directly with the Service Provider or with the Contractor. Pricing or discount levels negotiated with the Service Provider and made available to the Contractor will in turn be made available to the State with the full benefit of the negotiated price. Preferential pricing or discount levels shall be made available to the State at the same or lower mark-up percentage that Contractor applies to regularly priced products.

The maximum hourly and other applicable rates for professional services are as provided through the Master Contract, as modified by any applicable agreements between the State and the Service Provider. Lower rates may be negotiated within an applicable Statement of Work.

6. Entire Agreement:

- a. By placing an order under this Contract, each Purchasing Entity agrees that this Contract and any agreement or information that is incorporated by written reference into this Contract or the applicable ordering document (including reference to information contained in a URL or referenced policy), together with the applicable ordering document, are the complete agreement for the Services ordered by such Purchasing Entity and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Services. Agreements between the State and the Service Provider are considered incorporated into this Contract and any applicable Ordering document and apply in accordance with the Order of Precedence section of this Contract to the extent such agreements apply to use of products or services contained in an order. No financial obligation of the Participating State and/or any Purchasing Entity shall be affected by any change to information contained in a URL or referenced policy, nor will any additional material obligations be placed on the Participating State and/or any Purchasing Entity as a result of any such changes.
- b. It is expressly agreed that the terms of this Contract and any Insight Public Sector, Inc order shall supersede the terms in any Insight Public Sector, Inc click-through agreement, any purchase order, procurement internet portal or any other similar non- Insight Public Sector, Inc document and no terms included in any such click-through agreement, purchase order, portal or other non- Insight Public Sector, Inc document shall apply to the Services ordered. Any order may not modify, diminish

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or derogate the terms of Contract or add additional terms and conditions without prior written approval the Minnesota Office of State Procurement

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity:		Contractor: Insight Public Sector, Inc.
Signature: DocuSigned by: <i>Matt Hassenstab</i> 6005AE573CD4486	DocuSigned by: <i>Andy Doran</i> 68D02A26D7604BA...	Signature: <i>Scott Friedlander</i> Scott Friedlander (Jun 24, 2021 14:30 EDT)
Name: Matt Hassenstab	Andy Doran	Name: Scott Friedlander
Title: Acquisition Management Specialist	IT Acquisitions Supervisor	Title: President
Date: 6/29/2021	6/29/2021	Date: 6/24/2021

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

**Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.**

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Minnesota Exhibit A

Minnesota General Terms, Conditions, and Specifications

1. DEFINITIONS.

- a. **CPV Members.** The Cooperative Purchasing Venture (CPV) program was established by Minn. Stat. § 16C.03, subd. 10, which authorizes the commissioner of the Minnesota Department of Administration (Commissioner of Administration) through its Office of State Procurement (OSP) to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities" with one or more governmental units and other entities as described in Minn. Stat. § 471.59, subd. 1 and Minn. Stat. § 16C.03, subd. 10. Based on this authority, the Commissioner of Administration enters into a joint powers agreement that designates OSP as the authorized purchasing agent for the governmental unit or other entity. Governmental units and other entities joining the program are given an access code which identifies them as CPV members and permits them to access the OSP website to get information about commodities and/or services available on the State of Minnesota (State) contracts. Governmental units and other entities who are not members of the CPV program are not authorized to use the contract prices. The Contract Vendor agrees to provide the contract to CPV members at the same prices, terms, conditions, and specifications. For additional information, visit the OSP website at www.mmd.admin.state.mn.us.
- b. **State Agencies.** This term applies only to State agencies and departments, as defined in Minn. Stat. §§ 15.01 and 15.021.
- c. **Ordering Entity.** This term applies to any State Agency or CPV Member when allowed in the Participating Addendum.
- d. **State and State of Minnesota.** These two terms apply to the Minnesota Department of Administration, Office of State Procurement (OSP), representing the State of Minnesota as the contracting agency for the Participating Addendum. These terms also apply to the State's Office of MN.IT Services when acting within its statutorily defined contracting capacity.
- e. **State of Minnesota, Office of MN.IT Services.** Minnesota's Information Technology agency. The Office of MN.IT Services is responsible for providing or entering into managed services contracts for the provision, improvement, and development of business application software and related technical support services and other information technology systems and services to Minnesota state agencies pursuant to Minnesota Statute section 16E.016(a).
- f. **Contract Vendor and Contractor.** These two terms apply to the awarded vendor from the NASPO ValuePoint Master Agreement that OSP selects to receive a Participating Addendum.
- g. **Contract.** Contract is defined as the Minnesota Participating Addendum, which incorporates the terms of the NASPO ValuePoint Master Agreement.

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- h. **Master Contract.** Master Contract is defined as the corresponding_NASPO ValuePoint Master Agreement between NASPO ValuePoint and the Contractor.
 - i. **Online Services.** Online Services that may be supplied under this Contract include online services, hosting services, cloud services, and related services listed in or incorporated into the NASPO ValuePoint Master Agreement, as amended.
2. **STATE AUDITS** (Minn. Stat. § 16C.05, Subd. 5). Insight Public Sector, Inc. will comply with Minn. Stat. § 16C.05, Subd. 5, as applicable to the specific performance of this Contract, to the extent permitted by Minnesota law. The books, records, documents, and accounting procedures and practices of the Contract Vendor or other party, that are relevant to the Contract or transaction are subject to examination by the contracting agency and either the Legislative Auditor or the State Auditor as appropriate for a minimum of six years after the end of the Contract or transaction. The transactions include, but are not limited to, the price discount percentages on the corresponding prices, hourly costs for Professional Technical Services, and the mutually agreed upon price schedule. Pursuant to this provision, Contract Vendor must maintain historical price files sufficient to confirm contract pricing.
 3. **ANTITRUST.** The Contract Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Participating Addendum resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State.
 4. **INSURANCE.** If applicable, prior to execution of the Participating Addendum, the Contract Vendor will be required to provide a copy of a Certificate of Insurance, including workers' compensation insurance coverage requirements of Minn. Stat. § 176.181 subd. 2, and other coverages per the insurance requirements if included in the Participating Addendum and per the insurance requirements of Section 16 of the Master Contract.
 5. **INDEMNIFICATION, HOLD HARMLESS, AND LIMITATION OF LIABILITY.** In accordance with Sections 13 and 43 of the Master Contract, Contract Vendor shall indemnify, protect, save and hold harmless the State, its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of the Contract by the Contract Vendor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the State's failure to fulfill its obligations pursuant to the Contract.

Notwithstanding anything to the contrary in the Master Contract or this Contract, Contract Vendor shall be liable to the State for Security Incidents and Privacy Incidents up to the amount in Section 43 of the Master Contract, or the amount of the minimum coverage required for data breach and privacy/cyber liability in Section 16 of the Master Contract, whichever is greater. "Security Incident" and "Privacy Incident" are defined in in Section 43 (Security and Data Protection) of this Contract.

For clarification and not as a limitation, the Contract Vendor hereby expressly extends, in addition to the other terms, conditions and specifications of the Contract, the foregoing defense and indemnification obligations to Cooperative Purchasing Venture (CPV) Members, including Board of Trustees of the Minnesota State Colleges and Universities, in

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addition to Agency as defined in Minn. Stat. 16.C.02, in addition to the legislative and judicial branches and constitutional offices of state government.

6. **LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State and federal laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State.
7. **GOVERNMENT DATA PRACTICES.** The Contract Vendor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contract Vendor and all data provided to the State by the Contract Vendor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with the Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the State. The State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contract Vendor or the State.

The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Contract, the Contract Vendor shall retain responsibility under the terms of this article for such work.

8. **RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation, and installation by the Contract Vendor and in the possession of the Contract Vendor or their authorized agent.
9. **GOVERNING LAW.** The Contract will be construed in accordance with and performance governed by the laws of the State of Minnesota. Except to the extent that the provisions of the Contract are clearly inconsistent therewith, the Contract shall be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent the Contract entails delivery or performance of services, the services will be deemed "goods" within the meaning of the UCC, except when to deem such services as "goods" is unreasonable.

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10. JURISDICTION AND VENUE. The Contract, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of the Contract or breach thereof shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota. The Contract Vendor voluntarily agrees to be subject to the jurisdiction of Minnesota for all proceedings arising out of the Contract, or any breach thereof.

11. HUMAN RIGHTS/AFFIRMATIVE ACTION. The State requires affirmative action compliance by its Contract Vendors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.

- a. Covered contracts and Contract Vendors. One-time acquisitions, or a contract for a predetermined amount of goods and/or services, where the amount of your response is in excess of \$100,000 requires completion of the Affirmative Action Certification page. If the solicitation is for a contract for an indeterminate amount of goods and/or services, and the State estimated total value of the contract exceeds \$100,000 whether it will be a multiple award contract or not, you must complete the Affirmative Action Certification page. If the contract dollar amount or the State estimated total contract amount exceeds \$100,000 and the Contract Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, the Contract Vendor must comply with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600. A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600 that had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months must have a certificate of compliance issued by the commissioner of the Department of Human Rights (certificate of compliance). A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 that did not have more than 40 full-time employees on a single working day during the previous 12 months within Minnesota but that did have more than 40 full-time employees in the state where it has its principal place of business and 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, subd. 1 requires the Contract Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the commissioner of the Department of Human Rights (commissioner) as indicated by a certificate of compliance. Minn. Stat. § 363A.36 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. 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 Contract Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various

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provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and parts 5000.3552-5000.3559.

- d. Disabled Workers. Minn. R. 5000.3550 provides the Contract Vendor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION 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.
- f. Consequences. The consequences of a Contract Vendor'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 the Contract by the commissioner or the State.
- g. Certification. The Contract Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any

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contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

12. EQUAL PAY CERTIFICATION. If this Contract could be in excess of \$500,000, the Contract Vendor must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A Contract Vendor is exempt if it has not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where it has its primary place of business. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us. See Minnesota Exhibit D for more details and to complete Equal Pay Certification.

13. PAYMENT. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." The Ordering Entity is not required to pay the Contract Vendor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate Ordering Entity. In addition, all goods and/or services provided must meet all terms, conditions and specifications of the Contract and the ordering document and be accepted as satisfactory by the Ordering Entity before payment will be issued.

Conditions of Payment. The Contract Vendor under the Contract must be in accordance with the Contract as determined by the sole discretion of the State's Authorized Representative and be in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Minnesota Secretary of State. The Contract Vendor will not receive payment for goods or services found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

14. PURCHASE ORDERS (PO). The State requires that there will be no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the Contract. The Contract number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract. The parties may agree through a Statement of Work to apply additional order-specific invoicing procedures when appropriate for the type of service ordered.

15. PURCHASING CARDS. Contract Vendor will accept a purchasing card for order placement in addition to accepting a purchase order, without passing the processing fees for the purchasing card back to the State. The State's single purchase limit is \$5,000 on the purchasing card.

16. TAXES. DO NOT add sales tax to the prices being offered. Unless otherwise instructed by the State, agencies will pay all applicable taxes directly to the Department of Revenue. Per Department of Revenue Tax Fact Sheet 142, State agencies are not required to submit an ST3 form to their suppliers. See [website](http://www.revenue.state.mn.us) at <http://www.revenue.state.mn.us>.

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If orders are issued by Cooperative Purchasing Venture (CPV) Members, the Contract Vendor should confirm all of the tax requirements with the ordering entity.

17. SHIPPING REQUIREMENTS. All shipments shall be FOB Destination. Freight charges shall be prepaid and allowed unless otherwise stated in the NASPO ValuePoint Master Agreement.

18. DEFAULT. All commodities and services furnished will be subject to inspection and acceptance by the Ordering Entity after delivery. No substitutions or cancellations are permitted without approval of the Ordering Entity. Back orders, failure to meet delivery requirements, or failures to meet specifications in the purchase order and/or the Contract authorizes the Ordering Entity to cancel the purchase order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the defaulting Contract Vendor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contract Vendor may be removed from the vendor's list, suspended or debarred from receiving a Contract for failure to comply with the terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.

19. ASSIGNMENT. The Contract Vendor shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's Authorized Representative. Such consent shall not be unreasonably withheld. The Contract Vendor shall give written notice to the State's Authorized Representative of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of the Contract. Failure to do so may result in the Contract Vendor being held in default. This consent requirement includes reassignment of the Contract due to a change in ownership, merger, or acquisition of the Contract Vendor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contract Vendor's right to assign the Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contract Vendor shall remain solely liable for all performance required and provided under the terms and conditions of the Contract.

20. INTELLECTUAL PROPERTY RIGHTS AND INTELLECTUAL PROPERTY INDEMNIFICATION.

Applicable when Contract Vendor or an approved subcontractor is developing intellectual property for the State under a Statement of Work or Work Order.

(a) *Pre-Existing Intellectual Property Rights.* State and Contract Vendor shall each retain ownership of, and all rights, title, and interest in their own pre-existing intellectual property and all derivative works arising therefrom, subject to any license rights contained herein or otherwise executed between the parties. To the extent permitted by third party intellectual property rights, and subject to any license agreements executed between the parties, Contract Vendor grants to State an unlimited, royalty-free, paid up, perpetual, non-exclusive, irrevocable, non-transferable license to use and modify any of its pre-existing intellectual property or its ancillary or derivative works incorporated into any deliverable or otherwise delivered to the State, solely for use by the State, or State's contractors, for governmental purposes.

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(b) *Intellectual property rights.* Except as set forth in Section 20(a), the State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the works and documents created and paid for under this Contract. The "works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contract Vendor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes documents. The "documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contract Vendor, its employees, agents, or subcontractors, in the performance of this Contract. The documents will be the exclusive property of the State and all such documents must be immediately returned to the State by the Contract Vendor upon completion or cancellation of this Contract. To the extent possible, those works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contract Vendor assigns all right, title, and interest it may have in the works and the documents to the State. The Contract Vendor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the works and documents.

(c) *Obligations*

(1) Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contract Vendor, including its employees and subcontractors, in the performance of this Contract, the Contract Vendor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.

(2) Representation. The Contract Vendor warrants that any materials or products provided or produced by the Contract Vendor or utilized by the Contract Vendor in the performance of the Contract will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. The Contract Vendor must perform all ads, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Contract Vendor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Contract Vendor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. In the event of any such claim by any third party against the State, the State shall promptly notify the Contract Vendor.

(3) Notwithstanding any other indemnity obligation contained herein, the Contract Vendor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contract Vendor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Contract Vendor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees.

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21. PARTICIPATING ADDENDUM AMENDMENTS. Except as provided herein, the Participating Addendum shall be modified only by written amendment duly executed by an authorized representative of the State and the Contract Vendor. No alteration or variation of the terms and conditions of the Participating Addendum shall be valid unless made in writing and signed by the parties as required by law. Every amendment shall specify the date on which its provisions shall be effective. An approved Participating Addendum amendment means one approved by the authorized signatories of the Contract Vendor and the State as required by law.

22. TERMINATION OF THE PARTICIPATING ADDENDUM. Unless an applicable remedy allows for shorter notice or immediate termination, the Participating Addendum or any related Statement of Work may be canceled by the State or the Commissioner of Administration at any time, with or without cause, upon 30 days written notice to the Contract Vendor. In the event of such a cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, only for work or services satisfactorily performed and accepted. If the State terminates the Contract for default or other cause the Contract Vendor shall provide a pro-rated refund to the State for all prepaid but unused fees.

In the event the Contract Vendor is in default, the Participating Addendum is subject to immediate cancellation to the extent allowable by applicable law.

In the event of expiration, termination or cancellation of the Participating Addendum or Statement of Work for any reason the Contract Vendor shall, in accordance with the State's directions: (1) continue to provide any then-existing Services for as long as the State needs to transfer its data, software, security credentials including, but not limited to, any account root or access keys, and other assets to an alternate service or service provider; and/or (2) transfer the account with its existing IT environment and security credentials to the State or to a new third-party contract vendor of the State's choosing while minimizing service disruption. The Contract Vendor will be entitled to pro-rata payment at the pricing in effect prior to expiration, termination or cancellation of the Participating Addendum or Statement of Work for the continuing services for the period of time needed, subject to any other limitations within this Participating Addendum and other agreements between the State and the Contract Vendor.

The Contract Vendor may request to cancel the Participating Addendum or any related Statement of Work but must receive written approval from the State. Any term or condition that allows the Contract Vendor to terminate the Contract for any or no reason (i.e., termination for convenience) is null and void.

23. ADMINISTRATIVE PERSONNEL CHANGES. After execution of this Participating Addendum the State must be notified of intended changes in the Contract Vendor's administrative personnel as soon as practicable.

24. PUBLICITY. Any publicity given to the program, publications or services provided resulting from a State contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any

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subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the State's Authorized Representative and the State's Assistant Director or designee of Office of State Procurement.

The Contract Vendor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of the Contract without the prior written consent of the State's Assistant Director or designee of the Office of State Procurement. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

25. AMERICANS WITH DISABILITIES ACT (ADA). Products provided under the Contract must comply with the requirements of the Americans With Disabilities Act (ADA). The Contract Vendor's catalog and other marketing materials utilized to offer products under the Contract must state when a product is not in compliance. If any descriptive marketing materials are silent as to these requirements, the Contract Vendor agrees that the customer can assume the product meets or exceeds the ADA requirements.

26. NONVISUAL ACCESS STANDARDS. Pursuant to Minn. Stat. § 16C.145, the Contract Vendor shall comply with the following nonvisual technology access standards :

- a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards are not applicable for installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

27. USAGE REPORT. The Contract Vendor is required to furnish usage data to the State's Authorized Representative on a quarterly basis based on the state fiscal year which begins on July 1. The quarter periods are July 1 to September 30 (1st Quarter), October 1 to December 31 (2nd Quarter), January 1 to March 31 (3rd Quarter), and April 1 to June 30 (4th Quarter). The report on the Contract usage must consist of the total dollars expended by both State Agencies and CPV members. Failure to provide these reports may result in Contract cancellation. The State may request additional periodic or ad-hoc reports as necessary.

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- 28. MINNESOTA REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** On a quarterly basis, the Contract Vendor shall return to the Department of Administration, Office of State Procurement, a fee of 1% (.01 multiplication factor) of the total sales during that quarter, to assist with the cost of administering the Participating Addendum. The administrative fee shall be remitted to the State within 30 days of the end of the quarter. The quarter periods are July 1 to September 30 (1st Quarter), October 1 to December 31 (2nd Quarter), January 1 to March 31 (3rd Quarter), and April 1 to June 30 (4th Quarter). The Contract Vendor must provide a report detailing the total sales to State Agencies and CPV Members. The report must be submitted with the check on or before the required 30 days after the end of the quarter. In accordance with Section 27 of the Master Contract, Contract Vendor may adjust Master Contract pricing in proportion with the State Administrative Fee. However, Contract Vendor shall not adjust pricing to account for the NASPO ValuePoint Administrative Fee, which is assumed to be part of Contract Vendor's pricing proposal.
- 29. SEVERABILITY.** If any provision of the Contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions; if the remainder of the Contract is capable of performance it will not be affected by the declaration or finding and will be fully performed.
- 30. ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE.** In accordance with Minn. Stat. § 16A.40 the Contract Vendor is required to provide their bank routing information to the Minnesota Department of Finance to enable payments to be made through EFT.
- 31. COPYRIGHT.** The Contract Vendor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted composition, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.
- 32. SURVIVABILITY.** The following rights and duties of the State and Contract Vendor will survive the expiration or cancellation of the resulting Contract(s). These rights and duties include, but are not limited to the paragraphs on Indemnification, Hold Harmless, and Limitation of Liability, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Intellectual Property Indemnification, Publicity and Minnesota Reporting Requirements and Administrative Fees. Software licenses, warranty, maintenance agreements and service agreements that were entered into under the terms and conditions of the Agreement shall survive the expiration or termination of this Agreement.
- 33. PRODUCTS CONTAINING CERTAIN TYPES OF POLYBROMINATED DIPHENYL ETHER BANNED.** Not applicable
- 34. IT ACCESSIBILITY STANDARDS.**

The State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content

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Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software/products/subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State. When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact and/or improve the product's/service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

35. E-VERIFY CERTIFICATION. For services in excess of \$50,000, the Contract Vendor certifies that as of the date of services performed on behalf of the State, the Contract Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. This is required by Minnesota Statutes Section 16C.075. The Contract Vendor shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available on OSP website www.mmd.admin.state.mn.us.

All subcontractor certifications must be kept on file with the Contract Vendor and made available to the State upon request.

36. HAZARDOUS SUBSTANCES. To the extent that the goods to be supplied to the State by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide the State with Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.

37. SUBCONTRACTOR PAYMENT (When Applicable). In accordance with Minn. Stat. § 16A.1245, the Contract Vendor shall, within 10 days of receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contract Vendor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontractor that takes civil action against the Contract Vendor to collect

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interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action.

The Contract Vendor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under the Contract. In the event the Contract Vendor fails to make timely payments to a subcontractor or supplier, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contract Vendor and deduct said payment from any remaining amounts due the Contract Vendor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contract Vendor written notice that payment will be made directly to a subcontractor or supplier for undisputed services. If there are no remaining outstanding payments to the Contract Vendor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

- 38. SOFTWARE AND LICENSING AGREEMENTS.** Prior to the State signing any ordering document and upon request at other times, Contract Vendor must submit to the State for approval any license agreements, maintenance agreements, or any other documents pertinent to the products and/or services in this Participating Addendum.
- 39. TAXPAYER IDENTIFICATION:** The Contract Vendor shall be registered as a vendor to the State in the SWIFT Procurement System. Registration must be done online at <http://www.mmb.state.mn.us/vendorresources>.
- 40. STATE'S NON-INDEMNIFICATION.** Nothing herein, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Contract Vendor, Contract Vendor's subcontractors, or Contract Vendor's agents. This shall extend to all agreements related to the subject matter of this Participating Addendum, and to all terms subsequently added, without regard to order of precedence.
- 41. ORDERING ENTITY.** The Contract Vendor will accept Orders and Statement of Work documents from the Office of MN.IT Services, and from eligible CPV members upon supplying the required Security Disclosure to such CPV Members. The State reserves the right to add additional State Agencies and CPV members, as defined in General Terms and Conditions section 1.Definitions, to the Contract upon mutual agreement by both parties.
- 42. SECURITY DISCLOSURE TO CPV MEMBERS.** As part of any Contract Vendor's proposal/quote and prior to purchase, the Contract Vendor must provide written notice to any Cooperative Purchasing Venture (CPV) entity purchasing cloud services. The notice must state that the State makes no assurance of the security and protection of their data in the Cloud Computing environment. The State encourages entities to conduct their own risk analysis prior to using this Contract. The written notice must be signed by the entity acknowledging receipt of the notice and the reseller must retain the signed written notice for a minimum period of six (6) years after the purchase. The signed written notice, or copy, must be made available to the State, including the Office of MN.IT Services, upon request. The State has developed the written notice document, which is attached herein as Minnesota Exhibit B. The Contract Vendor is not required to provide notice to and obtain signature from the same entity more than once within the term of this contract for a particular

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cloud service. The Contract Vendor is not required to provide notice to the Office of MNIT Services.

43. SECURITY AND DATA PROTECTION.

This section applies to Orders placed under this Contract in addition to the data security and data protection provisions of the Master Contract.

a. State Data:

When providing Cloud Services or Professional Services Contract Vendor will protect and secure all State Data as set forth in the Contract, in accordance with Order-specific requirements of the applicable Ordering Document and in accordance with applicable law. To the extent Contract Vendor is not providing its own Cloud Services or Professional Services, Contract Vendor warrants that it can provide third party solutions and services substantially in compliance with this Security and Data Protection Section, or in compliance with any applicable agreement between the State and Service Provider that covers the security and data protection for the products and services ordered.

"Data" or "State Data" has the meaning of "government data" in Minnesota Statutes section 13.02, subdivision 7.

"Not public data" has the meaning in Minnesota Statutes section 13.02, subdivision 8a.

In the event Contract Vendor receives a request to release any State data, Contract Vendor must immediately notify the State's data practices compliance official. The State will give Licensor instructions concerning the release of the data to the requesting party before the data is released. Contract Vendor must comply with the State's instructions. The civil remedies of Minnesota Statutes section 13.08 apply to the release of the data by Contract Vendor.

All State data, including copies, summaries and derivative works thereof, must be remitted, in a mutually agreeable format and media, to the State by the Contract Vendor upon request or upon completion, termination or cancellation of the Agreement. The foregoing sentence does not apply if the State Chief Information Security Officer or delegate authorizes in writing the Contract Vendor to sanitize and/or destroy the data and Contract Vendor certifies in writing the sanitization and/or destruction of the data. Within ninety days following any remittance of State data to the State, Contract Vendor shall, unless otherwise instructed by the State in writing, sanitize and/or destroy any remaining data and certify in writing that the sanitization and/or destruction of the data has occurred. Any such remittance, sanitization or destruction will be at Contract Vendor's sole cost and expense.

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

b. Monitoring and Support Locations.

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During the term of the Contract, Contract Vendor will locate all monitoring and support of all the Cloud Services only in the continental United States.

c. Security Audits & Remediation:

Contract Vendor will audit the security of the systems and processes used to provide any and all Cloud Services, including those of the data centers used by Contract Vendor to provide any and all Cloud Services to the State in accordance with the terms of the Master Agreement and this Contract except that:

- (1) Any reference to a Service Organization Control (SOC) 2 audit shall mean Service Organization Control (SOC) 2 Type II.

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

Contract Vendor will work cooperatively with the State to help identify data security requirements and appropriate controls and solutions appropriate to each Order, and the parties will agree to the appropriate standards and specifications in the Ordering Document.

When applicable to the State data and the cloud services ordered and when so specified in an Ordering Document, Contract Vendor will:

- (i) Comply with all requirements, restrictions, and conditions that apply to the Office of MN.IT Services in the July 1, 2015, Amended MNsure Data Sharing Contract, currently available at <https://www.mnsure.org/images/MNIT-MNsure-data-sharing-Contract-2015-07.pdf>, and as amended. This document, as amended, is fully incorporated herein.
- (ii) Comply with the Health Insurance Portability Accountability Act ("HIPAA"), the HITECH Act, and other similar privacy laws. Contract Vendor also shall comply with the HIPAA Privacy Rule, HIPAA Security Rule, and other similar rules, regulations, and laws, including future amendments thereto.
- (iii) Comply with all applicable requirements, restrictions, and conditions set forth in the Criminal Justice Information Services ("CJIS") – Security Policy, Version 5.8, dated 6/1/2019, including, but not limited to, conducting FBI fingerprint background checks on all of Contract Vendor's agents, employees, and subcontractors that have or will have access to Criminal Justice Information ("CJI").
- (iv) Acknowledge that for the purposes of this Contract when storing, processing, transmitting or otherwise accessing State data subject to the Family Educational Rights and Privacy Act ("FERPA"), it is designated as a "school official" with "legitimate educational interests" in State data and associated metadata, as those terms have been defined under FERPA and its implementing regulations, and Contract Vendor agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Contract Vendor shall use State data only for the purpose of fulfilling its duties under the Contract and it will not monitor or share such data with or disclose it to any third party except as provided for in this Contract, as required by law, or as authorized in writing by the State. By way of illustration and not

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

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

e. Exceptions to Contract Vendor Terms and Conditions.

In addition to all other exceptions agreed to in the Master Agreement and this Contract:

- (i) To the extent that incorporation of the Insight Public Sector, Inc. Data Processing Agreement or other Cloud Agreements or Policies into this Agreement places any requirements on the State, the State only agrees to such requirements to the extent consistent with Minnesota law.
- (ii) With respect to the Insight Public Sector, Inc. Business Associate Agreement (BAA) that is part of the Master Agreement, neither the State nor MNIT as defined in this Contract are Covered Entities. An individual state agency may meet the definition of Covered Entity, subject to confirmation by the state agency. Any such Covered Entity may choose to enter into a separate BAA directly between that Covered Entity and the Contract Vendor, which will supersede the aforementioned Insight Public Sector, Inc. BAA when signed by both parties.

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- 44. AUDIT COSTS.** If the State is required to pay Contract Vendor's audit and collection costs, and/or attorney's fees, the State is only required to pay such costs and/or fees up to an aggregate of \$5,000.
- 45. NO AUTOMATIC RENEWALS.** The State does not agree to any automatic renewals which require the payment of additional fees.
- 46. NO MANDATORY MEDIATION OR ARBITRATION.** Any term or condition that requires the parties to mediate or arbitrate is null and void. Voluntary dispute resolution procedures are valid to the extent allowed by law.
- 47. TERMS AND CONDITIONS LIMITED BY MINNESOTA LAW.** The State only agrees to the terms and conditions of the Contract to the extent permitted by Minnesota law.
- 48. STATE'S RIGHTS AND REMEDIES CUMULATIVE.** All rights and remedies provided in the Contract are cumulative and not exclusive of any other rights or remedies that may be available to the State, whether provided by law, equity, statute or otherwise.
- 49. CONTRACT VENDOR DISCLAIMERS OF WARRANTIES INVALID.** Any term or condition that excludes, disclaims, or limits a Contract Vendor warranty is null and void.
- 50. DATA DISCLOSURE.** Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contract Vendor 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 agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contract Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.
- 51. DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES, OR POLITICAL SUBDIVISIONS**
Contract Vendor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contract Vendor's certification is a material representation upon which the Contract award was based. Contract Vendor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
- 52. PROFESSIONAL/TECHNICAL (P/T) SERVICES**
For eligible Minnesota state agencies utilizing this contract, Professional/Technical Services **must** be within the scope of services available through the Master Contract. State agencies **must** request, in writing, and obtain prior written approval from the State's Department of Administration, Office of State Procurement (OSP) before proceeding with projects.
- 53. RETAINAGE.** Under Minn. Stat. § 16C.08, subd. 2 (10), for Professional and Technical services performed under the terms of this Contract, no more than 90 percent of the amount

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due for those Professional and Technical Services may be paid until the final product has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contract Vendor has satisfactorily fulfilled those Professional and Technical Services.

54. FEDERAL FUNDS. Payments under this Contract may be made from federal funds obtained by the State. The Contract Vendor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

55. ROOT ACCOUNT OWNERSHIP. The State shall own all root accounts created under this Contract and shall have sole possession of root account keys. Contract Vendor shall provide the root account keys to the State upon creation of applicable services under this Contract.

56. ORGANIZATIONAL CONFLICTS OF INTEREST

To the best of Insight Public Sector, Inc.'s knowledge, execution and performance of this Contract does not give rise to a Conflict of Interest (as defined below). Each party agrees to promptly notify the other if, at any time during the term of this agreement, either party becomes aware that it has an actual or potential conflict of interest, including any relationship that may impair the party's objectivity or ability to perform its obligations hereunder (a "Conflict of Interest"). Upon such notice, the parties will meet and engage in good faith negotiations to resolve the alleged or potential conflict in accordance with the dispute resolution provision set forth in Section 10 of the Master Agreement ("Defaults and Remedies"). If the parties are unable to resolve the conflict after a reasonable time, the parties may mutually agree to terminate this Addendum in accordance with Section 7 of the Master Agreement ("Termination").

In addition to the terms and conditions set forth in Section 21.a of the Master Agreement ("Fees and Taxes"), the parties hereby agree to insert the following sentences at the end of such subsection 21.a:

"Reimbursement of expenses related to the Provision of Professional Services, if any, shall be in accordance with the terms and conditions of the relevant Order and/or exhibit thereunder. In the event that the relevant Ordering Document does not include specific amounts or caps on expenses, the applicable Purchasing Entity shall not be liable to pay any expenses not explicitly agreed to in writing prior to the expenses being incurred."

In addition to the terms and conditions set forth in Section 32 of the Master Agreement ("Transition Assistance"), upon termination and upon a Purchasing Entity's written request, Insight Public Sector, Inc. will provide a Purchasing Entity with a confirmation that the Purchasing Entity's "Your Content" in the Services Environment has been deleted, sanitized or rendered permanently inaccessible.

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In addition to the terms and conditions set forth in Section 44.b.i of the Master Agreement ("Service Specifications"), the parties hereby agree to insert the following sentence at the end of such subsection:

"The terms of payment for such additional quantity to account for the Purchasing Entity's excess usage shall be in accordance with Section 21.a of the Master Agreement ("Fees and Taxes")."

Except for actions for nonpayment or breach of Insight Public Sector, Inc.'s proprietary rights, no action, regardless of form, arising out of or relating to this Addendum may be brought more than six years after the cause of action has accrued.

57. IMMIGRATION STATUS CERTIFICATION

Insight Public Sector, Inc. agrees to comply with the Immigration Reform and Control Act of 1986 ("IRCA") in relation to all employees performing work in the United States. Insight Public Sector, Inc. does not knowingly employ person in violation of the United States immigration laws. As of the date of this Addendum, Insight Public Sector, Inc. has implemented the E-Verify program for all newly hired U.S.-based employees who will perform work on this Addendum in the United States. In connection with orders of Professional Services under this Addendum, Insight Public Sector, Inc. will include this clause or a substantially equivalent clause in all of its subcontracts issued under this Addendum and shall obtain the State of Minnesota-Immigration Status Certification from all subcontractors performing services under this Addendum and maintain such certifications for inspection by the Participating State if such inspection is requested by the Participating State. If Insight Public Sector, Inc. is not in compliance with this section and has not cured its non-compliance within 30 days of written specification of such non-compliance from the Participating State, the Participating State reserves the right to determine what action it may take, including but not limited to terminating this Addendum (in accordance with Section 10 of the Master Agreement) and/or suspending or debarring Insight Public Sector, Inc. from state purchasing in accordance with and subject to Minnesota law.

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GENERAL INSURANCE REQUIREMENTS

The Contractor/Contract Vendor (Contract Vendor) shall maintain insurance to cover claims which may arise from operations under this Contract,

The Contract Vendor shall not commence work under the Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. The Contract Vendor shall maintain such insurance in force and effect throughout the term of the Contract.

All coverages and limits shall remain in force and effect throughout the term of the Contract.

NOTICE TO THE CONTRACT VENDOR:

The failure of the State of Minnesota to obtain a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the Contract Vendor to provide such insurance.

The Owner reserves the right to immediately terminate the Contract if the Contract Vendor is not in compliance with the insurance requirements and the Owner retains all rights to pursue any legal remedies against the Contract Vendor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

NOTICE TO INSURER:

The Contract Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

REQUIREMENTS FOR THE CONTRACT VENDOR:

The Contract Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contract Vendor's performance under this Contract.

If Contract Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Contract Vendor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contract Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota.

The Contract Vendor is responsible for payment of Contract related insurance premiums and deductibles.

If the Contract Vendor is self-insured, a Certificate of Self-Insurance must be attached.

Insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the MN Department of Commerce if they are not rated by AM Best.

The Contract Vendor's Umbrella or Excess Liability insurance policy may be used to supplement the Contract Vendor's policy limits to satisfy the full policy limits required by the Contract.

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POLICY REQUIREMENTS:

1. Workers' Compensation Insurance:

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

Coverage B – Employer's Liability

\$100,000 Bodily Injury by Disease per Employee

\$500,000 Bodily Injury by Disease Aggregate

\$100,000 Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts the Contract Vendor from Workers' Compensation insurance or if the Contract Vendor has no employees in the State of Minnesota, the Contract Vendor must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excludes the Contract Vendor from MN Workers' Compensation requirements.

If during the course of the Contract the Contract Vendor becomes eligible for Workers' Compensation, the Contract Vendor must comply with the Workers' Compensation Insurance requirements included herein and provide the State of Minnesota with a certificate of insurance.

Evidence of Subcontractor insurance shall be filed with the Contract Vendor.

2. Automobile Liability Insurance:

The Contract Vendor shall maintain insurance to cover liability arising out of the ownership, operation, use or maintenance of all owned, hired and non-owned autos, and in case any work is subcontracted the Contract Vendor will require the subcontractor to maintain Automobile Liability insurance.

A. Minimum Limits of Liability:

\$2,000,000 - Per Occurrence – Bodily Injury and Property Damage Combined Single Limit

B. Coverages:

☒ Owned Automobile

☒ Non-owned Automobile

☒ Hired Automobile

Evidence of Subcontractor insurance shall be filed with the Contract Vendor.

3. General Liability Insurance:

The Contract Vendor shall maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the

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Contract whether the operations are by the Contract Vendor or by a subcontractor or by anyone directly or indirectly employed by the Contract Vendor under the Contract.

A. Minimum Limits of Liability:

\$2,000,000 - Per Occurrence

\$3,000,000 - Annual Aggregate

\$3,000,000 - Annual Aggregate applying to Products/Completed Operations

B. Coverages

☒ Premises and Operations Bodily Injury and Property Damage

☒ Personal & Advertising Injury

☒ Blanket Contractual

☒ Products and Completed Operations

☒ State of Minnesota named as an Additional Insured

4. **Network Security and Privacy Liability Insurance (or equivalent):**

Contractor shall maintain insurance to cover claims which may arise from failure of Contractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of confidential or private information, transmission of a computer virus or denial of service.

Contractor is required to carry the following **minimum** limits:

\$10,000,000 per occurrence

\$10,000,000 annual aggregate

5. **Professional/Technical, Errors and Omissions, including Network Security and Privacy Liability Insurance (or equivalent Network Security and Privacy Liability coverage endorsed on another form of liability coverage or written as a standalone policy):**

This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract.

Contractor is required to carry the following **minimum** limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

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State of Minnesota Named as an Additional Insured

Insurance certificate holder should be addressed as follows:

State of Minnesota
50 Sherburne Avenue
Room 112
St. Paul, MN 55155

MN-Insight PA

Final Audit Report

2021-06-24

Created:	2021-06-24
By:	AMANDA LUEDY (AMANDA.LUEDY@INSIGHT.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZonV3c7oMsN6Z_jJADLKgWkuQ5IDwzyw

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-  Document created by AMANDA LUEDY (AMANDA.LUEDY@INSIGHT.COM)
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