



# State of Minnesota Contract

SWIFT Contract No.: 262825

This Contract is between the State of Minnesota, acting through its Commissioner of Administration ("State") and Procellis Technology, Inc., whose designated business address is 6820 Shingle Creek Pkwy, Suite 2, Minneapolis, MN 55430 ("Contractor"). State and Contractor may be referred to jointly as "Parties."

## Recitals

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1. State issued a solicitation identified as SWIFT Event # G0210 – 2000012085 on July 14, 2021, for Servers, Storage, Related Equipment, Accessories, and Services ("Solicitation");
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

## Contract

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### 1. Term of Contract

1.1 Effective date. January 17, 2025, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.

1.2 Expiration date. December 31, 2026, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The contract may be extended for up to an additional three years, in increments as determined by the State, through a duly executed amendment.

1.3 Contract Use. This Contract is not exclusive and shall not be construed as guarantying a minimum or maximum amount of usage.

### 2. Contractor's Duties

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

### 3. Representations and Warranties

3.1 Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law the State is empowered to engage such assistance as deemed necessary.

3.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.

3.3 Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.

#### **4. Time**

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

#### **5. Compensation and Conditions of Payment**

5.1 Compensation. The State will pay for performance by the Contractor under this Contract in accordance with the breakdown of costs as set forth in Exhibit D which is attached and incorporated into this Contract.

5.2 Conditions of Payment. All duties performed by the Contractor under this Contract must be performed to the State's satisfaction and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

#### **6. Authorized Representative**

6.1 The State's Authorized Representative is Kaleigh Stevens, Acquisition Management Specialist, Department of Administration, Office of State Procurement, 112 Administration Building, 50 Sherburne Avenue, Saint Paul, MN 55155, 651.201.2438, [kaleigh.stevens@state.mn.us](mailto:kaleigh.stevens@state.mn.us), or her successor or delegate, and has the responsibility to monitor the Contractor's performance.

6.2 Contractor's Authorized Representative. The Contractor's Authorized Representative is Damian Young, at the following business address and telephone number: 6820 Shingle Creek Pkwy, Suite 2, Minneapolis, MN 55430, 763.219.4187, or his successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

#### **7. Exhibits**

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

Exhibit A: General Contract Terms

Exhibit B: Insurance Terms

Exhibit C: Specifications, Duties, and Scope of Work

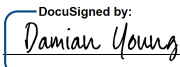
Exhibit D: Pricing

- Exhibit D, Supplement One: Sample Invoice
- Exhibit D, Supplement Two: Price Schedule

1. Contractor

*The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.*

Print name: Damian Young


Signature:   
DocuSigned by:  
126E613E4400471...

Title: Owner Date: 1/18/2025

2. State Agency

*With delegated authority*

Print name: Kaleigh Stevens

Signature:   
DocuSigned by:  
255AC7E55718453...

Title: Acquisition Mgmt. Spec. Date: 1/21/2025

3. Commissioner of Administration

*As delegated to The Office of State Procurement*

Print name: Andy Doran

Signature:   
DocuSigned by:  
68D02A26D7604BA...

Title: IT Acquisitions Supervisor Date: 1/21/2025

## **Exhibit A: Contract Terms**

### **1. Prompt Payment and Invoicing.**

1.1 Prompt Payment. The State will pay the Contractor pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice, or merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.

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

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

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

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

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

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

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

### **3. Termination.**

3.1 Termination for Convenience. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services or goods satisfactorily performed or delivered.

3.2 Termination for Breach. If the Contractor fails to perform according to the contract terms and conditions, the State is authorized to immediately cancel the Contract or purchase order, or any portion of it, and may obtain replacement goods or services and charge the difference of costs to the defaulting Contractor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contractor may be removed from the vendors list, suspended or debarred from receiving a Contract for failure to comply with terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.

3.3 Termination for Insufficient Funding. The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services addressed within this Contract. Termination must be by written notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and

effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that dedicated funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding. This notice will be provided within a reasonable time of the State's receiving notice.

#### **4. Force Majeure.**

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

#### **5. Indemnification.**

5.1 In the performance of this Contract, the Indemnifying Party must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Indemnifying Party's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

5.2 Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

#### **6. Governing Law, Jurisdiction, and Venue.**

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

#### **7. Contract Use by State Agencies.**

To the extent applicable, the Contract does not prohibit state agencies from using their delegated purchasing authority to procure similar goods and services from other sources.

#### **8. Warranty.**

The Contractor warrants to the ordering entity that materials and equipment furnished under the Contract will be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the contract. Work not conforming to these requirements, including substitutions not properly approved and authorized in writing may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or

normal wear and tear and normal usage. If requested, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used.

All installation materials and labor shall be guaranteed for a period of one (1) year following the date of final acceptance. During the first year following acceptance, the Contractor shall, upon notification by the ordering entity of any malfunctions, make necessary repairs, including labor, travel, and materials, at the Contractor's expense.

#### **9. Original Equipment Manufacturer (OEM Warranty).**

The equipment offered must include the OEM standard warranty. The Contractor is responsible for the cost of any inspections, adjustments, warranted parts, and labor charges to repair or replace warranted parts that are a result of equipment failure(s) during the warranty period. This shall be performed promptly unless otherwise mutually agreed in writing by the Customer and the Contractor. This warranty shall commence when the unit is put into service.

9.1 OEM Extended Warranty Options. If the Contractor provides an OEM Extended Warranty Option, the Contractor must provide a copy of the applicable terms and conditions, including a detail of coverage, to the State upon request. The cost of an OEM Extended Warranty must include all associated costs.

9.2 Contractor (Add-On) Warranty Options. The Contractor may provide additional warranty options, which include, but are not limited to travel pickup, or delivery charges that are a result of equipment failure(s) prior to or during the warranty period or extended warranty period. This warranty option shall commence when the unit is put into service and is in addition to OEM warranty options stated above.

#### **10. Cooperative Purchasing Venture (CPV) Members.**

The Contract will be available to all CPV members. Minn. Stat. § 16C.03, subd. 10 authorizes the State, acting through its Office of State Procurement, to enter into purchasing agreements with one or more governmental units and other entities allowable by law, as described in Minn. Stat. § 471.59, subd. 1, to exercise jointly the purchasing powers and functions each has individually. This authority is referred to as the Cooperative Purchasing Venture program. For more information, see State website [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us).

The Contractor agrees to extend the Contract to CPV members at the same prices, terms, conditions, and specifications. With the approval of the Contractor, a CPV member may add additional terms to its ordering document applicable to the CPV member's purchasing activities. Such additional terms shall not modify, diminish, or derogate the terms applicable to the State.

#### **11. Delivery.**

11.1 Contractor must confirm delivery locations and requirements with the ordering entity. Prior to delivery, the Contractor is responsible for confirming in writing with the ordering entity that the delivery location will accommodate unloading the equipment. Contractor must notify the receiving entity at least 72 hours before delivery to allow for inspection and compliance. No delivery can be made on a State Holiday (as defined in Minn. Stat. § 645.44, subd. 5), on Saturday or Sunday, or after 4:00 p.m. Central Time on weekdays, without prior written approval by the receiving entity.

##### **11.2 Shipping Label and Packing Slip.**

11.2.1 Shipping Label. Shipments must include a label, visible on the outside of the box.

11.2.2 Packing Slip. Shipments must include a packing slip located inside the box and must contain the following information:

- Line item description

- Quantity ordered
- Quantity included in shipment
- Any back order items
- All information contained on the packing label
- Serial number(s) for each product listed

### 11.3 Delivery Period.

11.3.1 Contractor must provide delivery of in-stock products within seven (7) calendar days of receipt of order. Any variation to this standard must be agreed upon by the ordering entity and the Contractor in writing at the time of order placement. Contractor is obligated to deliver within the quoted lead times. If delivery is not made within that time frame, the State reserves the right to deem the Contractor in default.

11.3.2 Expedited delivery is available upon request by the ordering entity. The ordering entity must make the request to Contractor's Sales Rep when placing the order. Contractor and the ordering entity will agree upon the expedited delivery option, including an amount that the expedited delivery cost will not exceed, when the order is placed.

## 12. Risk of Loss.

The State is relieved of all risks of loss or damage to the goods and equipment during periods of transportation, installation by the Contractor, or while in the possession of the Contractor or its agent.

## 13. Purchase Orders and Purchasing Cards.

The parties agree that there is no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the Contract. The Purchase Order number must appear on all documents (e.g., invoices, packing slips, etc.).

The Contractor must 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 maximum on the Contract is \$5,000 on the purchasing card, but it may be increased with the State's and the Contractor's approval.

## 14. Equipment Specifications.

All equipment must meet the contract specifications and all federal and State safety codes and regulations in effect at the date of manufacture. All equipment must be Original Equipment Manufacturer (OEM) equipment unless otherwise stated in the contract.

## 15. Items Offered as New.

All products, materials, supplies, replacement parts, and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available, unless otherwise stated in this Contract.

## 16. Equipment Trade-In.

17.1 Title to the trade-in equipment will transfer to the Contractor when the new equipment is delivered and accepted by the ordering entity, unless otherwise agreed to in writing by the Contractor and the ordering entity. The ordering entity assumes all costs associated with the title transfer of the trade-in equipment unless otherwise agreed to in writing by the Contractor and the ordering entity. The title of State equipment trade-ins shall be provided to the Contractor in accordance with Minn. Stat. § 168A.11.

17.2 Contractor's equipment trade-in program covers resale and non-internal-use leasing of and competitive trades. The ordering entity must provide access to equipment to complete an appraisal to determine the value

amount of the trade. The appraisal must be valid for 90 calendar days from the appraisal date. All trade-in value credits must be applied to a new equipment ordered under this Contract to qualify.

#### **17. Surplus Services Requirements.**

When agencies of the State of Minnesota have property they no longer need, they are required to contact the Fleet and Surplus Division of the Minnesota Department of Administration to obtain approval for the appropriate method of disposal in accordance with State law. The Fleet and Surplus Division Surplus Services will direct the transfer of workable used servers or accessories to other State agencies, to local units of government, and other eligible donees as described in federal law. If the property is deemed not appropriate for transfer, the Fleet and Surplus Division will advise the agency that owns the equipment to dispose of it in an environmentally safe manner.

#### **18. Product Changes During the Contract.**

All equipment offered should be available during the initial term of the contract. The Contractor must notify the State's Authorized Representative immediately if the manufacturer discontinues or replaces a contracted model number. A replacement model number must meet the contract specifications. The State is under no obligation to accept a replacement model. Any change to a contracted model number must be confirmed in writing by the State through a written amendment. The State reserves the right to request documentation for any requested change under this section to evaluate how the specifications of the replacement product deviates from the specifications of the replaced product.

#### **19. Adding a Manufacturer or Manufacturer's Product Line.**

Contractors may request to add a new Manufacturer or add a Product Line specific to a Manufacturer to the Contract. This requires the approval of the State and a duly executed amendment to the Contract. Such approval shall be at the State's sole discretion.

To add a Manufacturer product line, Contractor must submit confirmation from the Manufacturer or Distributor that specifically states that the Contractor is authorized to sell and support the proposed product(s). Once confirmed, the State will notify the Contractor by issuing an amendment to the Contract, which will confirm the item(s) and corresponding contract price.

#### **20. Product Returns.**

**20.1 Non-Defective Conforming Product.** The Customer may return an unopened, non-defective product conforming to the specifications of an order within 60 calendar days of the invoice date with no additional fees. If the non-defective conforming product is returned within 60 calendar days of the invoice date after it has been opened, the Contractor may charge the Customer a restocking fee of up to 10% of the cost of the product. Return shipping costs to return a non-defective conforming product to the Contractor is the responsibility of the Customer.

**20.2 Defective or Non-conforming Product.** The Customer may return any product determined by the Customer as defective or not conforming to the specifications, order, or contract, within 60 calendar days of receipt with no restocking or return shipping fee.

The Contractor must provide the Customer with a Return Merchandise Authorization number (RMA), or some equivalent number, and must arrange for a "call tag" to be issued via a "carrier" to order pick up of the defective or non-conforming product from the Customer. The "carrier" must pick up the defective or non-conforming product at the address to which the product was shipped.

**20.2.1 Replacement of Defective or Non-conforming Product.** The Customer may request the Contractor provide a replacement product or cancel the order. If the Customer chooses to have the defective or non-conforming product replaced, the Contractor must replace a defective or non-conforming product at no cost to the Customer.



20.2.2 Return of Defective or Non-conforming Product (without replacement). The Customer's account must be credited within fourteen (14) calendar days of arrival of the returned product at the Contractor's location. The amount to be credited must be the equal of the price of the product plus all freight, shipping, handling, or ancillary charges associated with shipment of the product from and return to the shipping location. If, after inspection, the Contractor determines that the product is not defective or non-conforming, the Contractor may bill the Customer for the return shipping charges.

## **21. Subcontracting and Subcontract Payment.**

21.1 Subcontracting Allowed. A subcontractor is a person or company that has been awarded a portion of the Contract by Contractor. Only subcontractors that have been approved by the Contract Administrator can be used for this Contract.

After the effective date of the Contract, the Contractor shall not, without prior written approval of the Contract Administrator, subcontract for the performance of any of the Contractor's obligations that were not already approved for subcontracting when the Contract was awarded. During this Contract, if an approved subcontractor is determined to be performing unsatisfactorily by the Contract Administrator, the Contractor will receive written notification that the subcontractor can no longer be used for this Contract.

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

21.2 Subcontractor Payment. Contractor must pay any subcontractor in accordance with Minn. Stat. § 16A.1245.

## **22. Data Disclosure.**

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

## **23. Government Data Practices.**

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

## **24. Intellectual Property Rights.**

24.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

24.1.1 “Documents” are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract.

24.1.2 “Pre-Existing Intellectual Property” means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

24.1.3 “Works” means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. “Works” includes Documents.

24.2 Ownership. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Contract. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Works and Documents.

24.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor’s Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

#### 24.4 Obligations.

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

24.4.2 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.

24.4.3 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor’s expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor’s or the State’s opinion is likely to arise, the Contractor must, at the State’s discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the

infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

**25. Copyright.**

The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

**26. Assignment of Antitrust Rights.**

Upon the request of the State of Minnesota, Contractor will irrevocably assign to State any state or federal antitrust claim or cause of action that the Contractor now has or which may accrue to the Contractor in the future, in connection with any goods, services, or combination provided by Contractor under the terms of this Contract.

**27. Survivability of Orders.**

In the event the term of any order or Professional/Technical Services work order ("Order") placed under this Contract extends past the termination or expiration of this Contract, the terms and conditions of this Contract shall remain in full force and effect as it applies to such order and will continue in effect for such order until the term of that order expires or the order is cancelled or terminated in accordance with the terms of this Contract.

**28. Contractor's Documents.**

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

**29. State Audits.**

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract.

**30. Usage Reports.**

Contractor is required to furnish Contract usage data (usage reports) to the Contract Administrator at the following email address: [osp.usagereports@state.mn.us](mailto:osp.usagereports@state.mn.us). Contract usage reports must consist of the total dollars spent by the State and other entities, broken down into two categories: State agencies and CPV members. The reporting frequency is on a quarterly basis. A final usage report is required at the expiration or termination the Contract. Failure to provide usage reports may result in contract cancellation. This term survives the expiration or termination of the Contract.

**31. 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 Contract. The 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 (1<sup>st</sup> Quarter), October 1 to December 31 (2<sup>nd</sup> Quarter), January 1 to March 31 (3<sup>rd</sup> Quarter), and April 1 to June 30 (4<sup>th</sup> 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.

The State reserves the right, at any time during the Contract period, to amend the Contract to change or add fees. This may include fees directed to the Department of Administration, Office of State Procurement, Office of Enterprise Technology or other state entities. The reporting requirements and amount of the fee will be specified in the Contract amendment. The Contract Vendor will be allowed to adjust the Contract pricing up to the percentage of any additional fee(s).

### **32. Diverse Spend Reporting.**

If the total value of the Contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Contract compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Contract is in effect.

### **33. Publicity and Endorsement.**

33.1 Publicity. Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

33.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

### **34. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions.**

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

### **35. Federal Funds.**

35.1 Compliance with Federal Requirements. Federal money will be used or may potentially be used to pay for all or part of the goods, construction or services under the Contract. The Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

35.2 Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

### **36. Contingency Fees Prohibited.**

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

### **37. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).**

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel,

when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

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

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

**39. E-Verify Certification (in accordance with Minn. Stat. § 16C.075).**

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/VerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

**40. Affirmative Action Requirements**

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

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

40.2 General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

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

**AFFIRMATIVE ACTION FOR DISABLED WORKERS**

40.3.1 The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

40.3.2 The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

40.3.3 In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

40.3.4 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

40.3.5 The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

40.4 Consequences. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

40.5 Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

#### **41. Equal Pay Certification.**

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

#### **42. Professional/Technical (P/T) Services Ancillary to Goods or General Services.**

For state agencies, Professional/Technical (P/T) Services must be related to the goods or services purchased from this Contract and is limited to \$50,000 per project. Based on the size, scope and complexity of a project, the Contract Administrator may approve dollar limits exceeding \$50,000 per project. This may require a separate work order contract defining the PT scope of work.

Ten percent (10%) of the cost of each P/T deliverable will be withheld by the State. The retainage will be held by the State until the P/T deliverable has been reviewed by the head of the agency entering into the Contract and the head of the agency has certified that the Contractor has satisfactorily fulfilled the terms of the Contract.

#### **43. Hazardous Substances.**

To the extent that the goods to be supplied to the State by the Contractor contain or may create hazardous substances, harmful physical agents, or infectious agents, as set forth in applicable State and federal laws and regulations, the Contractor must provide the State with Material Safety Data Sheets regarding those substances. A copy must be provided upon request. Goods and containers supplied to the State must be labeled in compliance with state and federal laws, rules, and regulations.

These terms apply to goods supplied under this contract:

43.1 Products Containing Triclosan Banned. The Contractor must comply with Minn. Stat. § 145.945.

43.2 Products Containing Certain Types of Polybrominated Diphenyl Ether Banned. The Contractor must comply with Minn. Stat. § 325E.385-325E.388).

43.3 Coal Tar Sealant Use and Sale Prohibited. The Contractor must comply with Minn. Stat. § 116.202.

43.4 Products Containing Mercury. The Contractor must comply with Minn. Stat. 116.92.

#### **44. Uniforms.**

Contractors and their subcontractors shall be properly uniformed prior to entering any facility. The Contractor's or their subcontractor's company name must be identifiable on the uniform.

#### **45. IT Accessibility Standard.**

Contractor acknowledges and is fully aware that the State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software, products, or subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. Contractor warrants that its Products comply with the above-mentioned accessibility Standards and agrees to indemnify, defend, and hold harmless the State against any claims related to non-compliance of Contractor's Product with the above-mentioned accessibility Standards. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

#### **46. Nonvisual Access Standards.**

Pursuant to Minn. Stat. § 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.

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

#### **47. Security and Data Protection.**

Contractor is responsible for the security and protection of State data subject to and related to Cloud Services in this Contract. The terms, conditions, and provisions of this Security and Data Protection section take precedence and will prevail over any other terms, conditions, and provisions of the Contract, if in conflict. This Security and Data Protection section, including its sub-sections, survives the completion, termination, expiration, or cancellation of the Contract.

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

"Cloud Services" includes "cloud computing" as defined by the U.S. Department of Commerce, NIST Special Publication 800-145 (currently available online at: <http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf>) and any other software, hardware, hosting service, subscription, or other service or product by which Contractor stores, transmits, processes or otherwise has access to State data.

"State" means the State, or a cooperative purchasing venture ("CPV") member when the CPV member is the ordering entity (if CPV purchases are permitted under this Contract).

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

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

"Security incident" means any actual, successful or suspected: (1) improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, modification of, alteration to, loss of, damage to or destruction of State data; (2) interference with an information system; (3) disruption of or to Contractor's service(s); or (4) any similar or related incident.

"Privacy incident" means violation of the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13); violation of federal data disclosure or privacy requirements in federal laws, rules and regulations; or breach of a contractual obligation to protect State data. This includes, but is not limited to, improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, damage to, loss of, modification of, alteration to or destruction of State data protected by such State or federal laws or by contract.

**47.1 Data Ownership.** The State solely and exclusively owns and retains all right, title and interest, whether express or implied, in and to any and all State data. Contractor has no and acquires no right, title or interest, whether express or implied, in and to State data.

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

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



In the event Contractor receives a request to release any State data, Contractor must immediately notify the State's data practices compliance official. The State will give Contractor instructions concerning the release of the data to the requesting party before the data is released. Contractor must comply with the State's instructions. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data by Contractor.

47.2 Notification of Incidents. If Contractor becomes aware of or has reasonable suspicion of a privacy incident or security incident regarding any State data, Contractor must report such incident to the State and the State Chief Information Security Officer as soon as possible, but no later than twenty-four (24) hours after such incident. The decision to notify the affected data subjects and the form of such notice following report of a privacy incident or security incident are the responsibility of the State. Notwithstanding anything to the contrary in this Contract, Contractor will indemnify, hold harmless and defend the State and its officers, and employees for and against any claims, damages, costs and expenses related to any privacy incident or security incident involving any State data. For purposes of clarification, the foregoing sentence shall in no way limit or diminish Contractor's obligation(s) to indemnify, save, hold harmless, or defend the State under any other term of this Contract. Contractor will reasonably mitigate any harmful effects resulting from any privacy incident or security incident involving any State data.

47.3 Security Program. Contractor will make best efforts to protect and secure the State data related to this Contract. Contractor will establish and maintain an Information Security Program ("Program") that includes an information security policy applicable to any and all Cloud Services ("Policy"). Contractor's Program and Policy must align with appropriate industry security frameworks and standards such as National Institute of Standards and Technology ("NIST") 800-53 Special Publication Revision 4, Federal Information Processing Standards ("FIPS") 199, Federal Risk and Authorization Management Program ("FedRamp"), or Control Objectives for Information and Related Technology ("COBIT").

Upon the State's request, Contractor will make its Policy available to the State on a confidential, need-to-know basis, along with other related information reasonably requested by the State regarding Contractor's security practices and policies. Unless inconsistent with applicable laws, Contractor and the State must treat the Policy and related information on security practices and policies that are specific to the State as confidential information and as not public data pursuant to Minn. Stat. § 13.37.

47.4 Data Management. Contractor will not use State data, including production data, for testing or development purposes unless authorized in writing by the State Chief Information Security Officer or delegate. Contractor will implement and maintain procedures to physically and logically segregate State data, unless otherwise explicitly authorized by the State Chief Information Security Officer or delegate.

47.5 Data Encryption. Contractor must encrypt all State data at rest and in transit, in compliance with FIPS Publication 140-2 or applicable law, regulation or rule, whichever is a higher standard. All encryption keys must be unique to State data. Contractor will secure and protect all encryption keys to State data. Encryption keys to State data will only be accessed by Contractor as necessary for performance of this Contract.

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

47.7 Data Center and Monitoring/Support Locations. During the term of the Contract, Contractor will: (1) locate all production and disaster recovery data centers that store, process or transmit State data only in the continental United States, (2) store, process and transmit State data only in the continental United States, and (3) locate all

monitoring and support of all Cloud Services only in the continental United States. The State has the right to on-site visits and reasonable inspection of the data centers upon notice to Contractor of seven calendar days prior to visit.

47.8 Security Audits & Remediation. Contractor will audit the security of the systems and processes used to provide any and all Cloud Services, including those of the data centers used by Contractor to provide any and all Cloud Services to the State. This security audit: (1) will be performed at least once every calendar year beginning with 2016; (2) will be performed according Statement on Standards for Attestation Engagements ("SSAE") 16 Service Organization Control ("SOC") 2, International Organization for Standardization ("ISO") 27001, or FedRAMP; (3) will be performed by third party security professionals at Contractor's election and expense; (4) will result in the generation of an audit report ("Contractor Audit Report"), which will, to the extent permitted by applicable law, be deemed confidential information and as not public data under the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13); and (5) may be performed for other purposes in addition to satisfying this section.

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

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

If the State becomes aware of any other Contractor controls that do not substantially meet the State's requirements, the State may request remediation from Contractor. Contractor will make best efforts to remediate any control deficiencies identified by the State or known by Contractor, in a commercially reasonable timeframe.

47.9 Subcontractors and Third Parties. Contractor warrants that no State data will be transmitted, exchanged or otherwise provided to other parties except as specifically agreed to in writing by the State Chief Information Security Officer or delegate. Contractor must ensure that any contractors, subcontractors, agents and others to whom it provides State data, agree in writing to be bound by the same restrictions and conditions under this Contract that apply to Contractor with respect to such data.

47.10 Compliance with Data Privacy and Security Laws and Standards. Contractor shall comply with all applicable State and federal data privacy and data security laws, rules, and regulations.

47.11 Remedies. Contractor acknowledges that the State, because of the unique nature of its data, would suffer irreparable harm in the event that Contractor breaches its obligation under this Security and Data Protection section, and monetary damages may not adequately compensate the State for such a breach. In such circumstances, the State will be entitled, in addition to monetary relief, to injunctive relief or specific performance as may be necessary to restrain any continuing or further breach by Contractor, without showing or proving any actual damages sustained by the State.

47.12 Business Continuity. Contractor shall have written business continuity and disaster recovery plans that define the roles, responsibilities and procedures necessary to ensure that Cloud Services provided under this Contract shall be maintained continuously in the event of a disruption to the Contractor's operations, regardless of the cause of the disruption. Such plans must, at a minimum, define the Contractor's actions to address the impacts of the following key areas likely to cause a disruption to Contractor's operations: loss of key personnel, loss of facility, and loss of information technology. Contractor must conduct testing and review of its business continuity and disaster recovery plan at least annually. Upon State request, Contractor must also participate, at mutually agreed upon times, in State business continuity and disaster recovery testing, training, and exercise activities.

Any term or condition that allows the Contractor to terminate the Contract for any or no reason (i.e., termination for convenience) is null and void. In the event of termination or cancellation of this Contract for any reason, the Contractor shall continue to provide any then-existing Cloud Services for as long as the State needs to transfer its

data, software and other assets to an alternate service or service provider. After any such termination or cancellation, the State may purchase the continuing Cloud Services at the pricing in effect prior to such termination or cancellation. The fee for any such purchase shall be prorated for the period of time needed, as determined by the State, and shall be reduced by the amount paid for Cloud Services that were not used prior to such termination or cancellation. The amount of any such fee reduction shall be determined on a pro-rata basis. The Contractor shall refund to the State any unused portion of payments for Cloud Services.

**47.13 Background Checks.** Contractor represents that it has conducted and will conduct background investigations into all of Contractor's agents, employees, and subcontractors that will provide Cloud Services to the State. Such background investigations must have been or will be conducted by investigating local, state and federal criminal records, local, state and federal civil case records, and employment references.

If any provision of this sub-section is found to violate any applicable laws, rules, or State policies, then the Contractor will be relieved of all obligations arising under such provision. Notwithstanding anything to the contrary in this sub-section, this sub-section is only applicable and effective to extent that it is consistent with applicable laws, rules, and State policies.

**47.14 Secure Coding.** Contractor warrants that all Cloud Services are free from any and all defects in materials, workmanship, and design. Contractor warrants that all Cloud Services are free from any and all viruses, malware, and other harmful or malicious code. Contractor must scan all source code for vulnerabilities, including before and after any source code changes are made and again before being placed into production, and must promptly remediate any and all vulnerabilities. Contractor must follow best practices for application code review and the most current version of the OWASP top 10.

#### **48. Supply Chain Security.**

Notwithstanding anything else in this Section, this Section does not and shall not limit any other rights of the State under this Contract, including, but not limited to, warranties, acceptance, and return policy, if any.

**48.1 Security Practices and Preventive Controls.** The Contractor will use reasonable commercial efforts to ensure that the Contractor and any subcontractors or third parties involved in assembling, manufacturing, packaging, distributing, handling, warehousing, transporting or shipping State goods, including goods intended to be but not yet delivered to the State, meet all applicable security standards and all applicable local, state, federal, and international laws, rules and regulations (hereinafter "supply chain security").

Contractor must maintain certification/accreditation in an official supply chain security program and comply with that program's security standards for all orders sourced from the Contract. Official supply chain security program is defined as one of the following: ISO 28000 or 27036 (as applicable), SAE AS5553 or other SAE standard (as applicable), Customs-Trade Partnership Against Terrorism (C-TPAT), Authorized Economic Operator (AEO), or other program accepted in writing by the State, Office of MN.IT Services (f/k/a Office of Enterprise Technology and d/b/a MN.IT or MN.IT Services)("MN.IT") and the State, Department of Administration's Office of State Procurement ("OSP"). To demonstrate certification/accreditation, Contractor must provide to OSP and MN.IT within one month following the effective date of this Contract or amendment adding this Section, whichever is later, a letter verifying its certification/accreditation in an official supply chain security program. Contractor will promptly notify OSP and MN.IT of any change to its certification/accreditation.

Alternatively, if Contractor is not certified/accredited or loses certification/accreditation, Contractor must complete a MN.IT security form to confirm that it complies with supply chain security. The form will require supporting documentation of any responses and must be completed to MN.IT's satisfaction.

**48.2 Notification of Supply Chain Security Breach.** Contractor will promptly notify OSP, MN.IT, and the ordering entity, if different from MN.IT, of any breach of supply chain security involving State goods, including goods

intended to be but not yet delivered to the State. Breach of supply chain security includes, but is not limited to, cargo theft, tampering, unauthorized access, or other activities that involve suspicious actions or circumstances. Goods received with viruses, malware or similar security deficiencies constitute breach of supply chain security.

**48.3 Secure Coding.** Contractor warrants that all products and services are free from any and all viruses, malware, and other harmful or malicious code. Contractor must scan all source code for vulnerabilities, including before and after any source code changes are made and again before being made available and/or placed into production, and must promptly remediate any and all vulnerabilities. If Contractor becomes aware of or has reasonable suspicion of a privacy and/or security incident(s) regarding any State data, a privacy and/or security incident targeting vulnerabilities in the product(s) and/or service(s) used by or purchased by the State, or a privacy and/or security incident that results in a successful access or use of the product and/or services used by or purchased by the State, Contractor must report such incident to the State and the State Chief Information Security Officer as soon as possible, but no later than twenty-four (24) hours after such incident.

**48.4 Return/Rejection of Goods.** Notwithstanding anything to the contrary, if a breach of supply chain security has occurred or the State in good faith suspects a breach may have occurred, including evidence that packaging or goods were tampered with or damaged, the State may reject delivery of those goods or return any of those goods already delivered. Breach of supply chain security has the meaning described in the preceding Subsection "Notification of Supply Chain Security Breach." Rejection of delivery or return of goods shall be solely the responsibility and at the cost and expense of the Contractor.

The State may sanitize or destroy components of the goods prior to returning the goods to Contractor or instruct Contractor to promptly sanitize or destroy goods upon their return. Following the completion of any such sanitization or destruction, and upon request by MN.IT, the Contractor shall provide a Certificate of Data Destruction/Sanitization that meets the requirements of the then current version of NIST Special Publication 800-88 or DOD 5220.22-M Supplement. The Certificate of Data Destruction/Sanitization must be provided to MN.IT, if requested, within one month following the return of the goods.

At no additional expense to the State, Contractor must provide within a reasonable time frame replacement goods for any goods that were rejected at delivery or returned due to a supply chain security breach. Any costs and expenses associated with removal or replacement of the goods, including sanitization and destruction costs and expenses, will be the responsibility of the Contractor.

#### **49. PCI Language.**

All of Contractor's systems and components that process, store, or transmit Cardholder Data shall comply with the most recent version of the Payment Card Industry Data Security Standard ("**PCI DSS**") promulgated by the PCI Security Standards Council, available online at: [https://www.pcisecuritystandards.org/document\\_library](https://www.pcisecuritystandards.org/document_library). The Contractor shall, upon request, provide the State with Contractor's current Attestation of Compliance signed by a PCI QSA ("Qualified Security Assessor"). For purposes of this sub-section, "Cardholder Data" has the meaning defined by the PCI Security Standards Council, Payment Card Industry (PCI) Data Security Standard (DSS) and Payment Application Data Security Standard (PA-DSS), **Glossary of Terms, Abbreviations, and Acronyms**, available online at: [https://www.pcisecuritystandards.org/document\\_library](https://www.pcisecuritystandards.org/document_library).

#### **50. Survival of Terms.**

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

## **Exhibit B: Insurance Requirements**

### **1. Notice to Contractor.**

1.1 The Contractor is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Contract.

1.2 Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of this Contract, unless otherwise specified in this Contract.

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

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

### **2. Notice to Insurer.**

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

2.2 Insurance certificate holder should be addressed as follows:

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

### **3. Additional Insurance Conditions. The following apply to the Contractor, or the Contractor's subcontractor:**

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

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

3.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles;

3.4 If Contractor is self-insured, a Certificate of Self-Insurance must be attached;

3.5 Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.

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

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

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

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

\$2,000,000 – per occurrence

\$2,000,000 – annual aggregate

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

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- Other; if applicable, please list \_\_\_\_\_
- **State of Minnesota named as an Additional Insured**, to the extent permitted by law

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

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

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

Evidence of Subcontractor insurance shall be filed with the Contractor.

**4.3 Workers' Compensation Insurance.** Statutory Compensation Coverage. Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

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

**4.4 Professional Liability, Errors, and Omissions.** This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

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

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

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

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

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

## **Exhibit C: Specifications, Duties, and Scope of Work**

### **1. Products Offered.**

1.1. Contractor must provide the following categories of products, to an ordering entity, on an as needed basis:

1.1.1 Server products that meet or exceed the standards listed in Exhibit C, Supplement 1, for the corresponding manufactures listed in Exhibit D, Supplement 2, Price Schedule.

1.1.2 SAN products that meet or exceed the standards listed in Exhibit C, Supplement 2, for the corresponding manufactures listed in Exhibit D, Supplement 2, Price Schedule.

1.1.3 Cloud Virtual Infrastructure Hosts products that meet or exceed the standards listed in Exhibit C, Supplement 3, for the corresponding manufactures listed in Exhibit D, Supplement 2, Price Schedule.

### **2. Sales and Marketing Support.**

2.1 Authorized Reseller. Contractor must be an authorized reseller of a manufacturer's products that are included in Exhibit D, Supplement 2, and shall provide manufacturer contact information upon request.

2.2 Contractors must provide adequate personnel necessary to meet required services provided under this contract.

2.3 Contractor sales representatives must serve as the first point of contact in providing general product and price information, consulting, and systems configuration advice.

2.4 Contractor must provide the following sales and marketing support capabilities:

- Sales representative must provide assistance within twenty-four working-hours of call placement.
- A toll-free telephone number with product ordering service available between 7:00 a.m. to 5:00 p.m. Monday through Friday, except for Holidays, or State approved equivalent
- Response time is critical to the performance of this Contract. Contractor representatives (preferably, managers and/or persons authorized to make business decisions and commitments for Contractor) may be required to meet with the State regarding Contractor performance.
- A customer service representative must be available to meet with State Agencies and CPV members upon request.

2.5 Customer Support.

2.5.1 Contractor's Client Services must be available to resolve pre-sales and post-sales inquiries from 7:00 a.m. until 5:00 p.m., central time, Monday through Friday, excluding holidays.

2.5.2 Limited Client Services is available outside the hours listed in section 2.4.1, above, by contacting the Support Desk.

2.6 Non-Service Request.

2.6.1 The Contractor's staff shall assist all customers in a timely fashion with the following:

2.6.1.1 Product knowledge and product needs

2.6.1.2 Instructions on the ordering process

2.6.1.3 Assistance with product use rights

2.6.1.4 Obtaining End User License Agreements (EULAs) or other vendor documents when necessary

2.6.1.5 Facilitating negotiations of EULAs or other vendor documents when requested by the State

2.6.1.6 Expediting orders

2.6.2 The Contractor should use its best efforts to respond, via e-mail or phone, to any comments or questions within one (1) business day. This response, if it does not include an answer, should include an estimated length of time until an answer will be received. The Contractor should be responsible for follow-through to ensure that all requests for information are answered. Specific data requests and reports (other than the reports that are otherwise already required) should be fulfilled on a mutually agreeable timeframe with the Contract Manager (Buyer/AMS).

2.6.3 Contractor's Client Services can respond to requests through a secure platform to store and share information, communicate, and manage expectations. All service events start with a ticket, which will serve as a historical document that detail a service event, such as an incident, problem, service request, and non-service requests. The ticket will govern and control how a service event is processed and will record notes,



workflow information for how the ticket was handled, ticket resolution, and other critical processing information.

2.7 State Coverage. Contractor must provide product, support, and maintenance coverage throughout the State of Minnesota, including greater Minnesota. Support, service, and maintenance coverage must not exclude any areas within Minnesota since State agencies and CPV members are located throughout the state.

### 3. Service - Technical Support.

3.1 Issue Resolution. Contractor must be able to resolve technical and non-technical issues with manufacturers and able to provide documentation of the incident.

#### 3.2 Services Provided.

3.2.1 Contractor agrees to provide IT Consulting and professional services to deliver personal service that helps clients understand and meet an ordering entity's business and technology needs. These services include consulting, designing, and testing of technology on critical infrastructure equipment prior to installation, and configuration, installation, programming, lifecycle management services.

3.2.2 Presales Systems Engineers and Solution Architect services to do the following:

3.2.2.1 Assist the ordering entity to determine upgrades options to provide the ordering entity with the opportunity for its storage to grow and scale.

3.2.2.2 Assist the ordering entity to prepare a suggested system upgrade schedule.

3.2.2.3 Assist the ordering entity to determine whether it would be more beneficial to purchase a new server or storage systems over purchasing single component upgrades.

#### 3.2.3 Data Migration Services.

3.2.3.1 For new server or storage system:

3.2.3.1.1 Contract shall apply the specific manufacturer best practices for the new server or storage system while adhering to customer policies and governance.

3.2.3.1.2 Contractor's data migration techniques and best practices center around developing a data migration plan that involves data backup strategy and replication which is essential to ensuring data is not lost or damaged. This migration strategy includes budget planning, current systems and data evaluations, device-specific process-knowledge preparation and documentation, migration design, and benchmark testing, validation of critical storage components, replication and data backup, migration execution, and post-migration validation and testing. Also included is an assessment of the current data and a migration process proposal document, which requires customer sign off and encompasses all processes, technologies, benchmark results, involved stakeholders, and any changes incurred. Post-migration, the system and data consistency is tested, verifying that the data, application performance, and network configurations are unaffected. New benchmark tests are conducted and compared to the pre-migration benchmarks. A final data migration results and findings document is then composed and presented to the stakeholders.

3.2.3.2 For adding new hard drives or processors to a current system:

3.2.3.2.1 Contract shall apply the specific manufacturer best practices while adding new hard drives or processors to a system while adhering to customer policies and governance.

3.2.3.2.2 Contractor's hardware upgrade techniques and best practices center around developing a hardware upgrade plan that involves data backup strategy and replication which is essential to ensure data is not lost or damaged. This upgrade strategy includes budget planning, current systems and data evaluations, device specific process-knowledge preparation and documentation, upgrade design and benchmark testing, validation of critical storage components, replication and data backup, upgrade execution, and post-upgrade validation and testing. Also included is an assessment of the current data and a migration process proposal document which requires customer sign off and encompasses all processes, technologies, benchmark results, involved stakeholders, and any changes incurred. Post-upgrade, the system

and data consistency is tested, verifying that the data, application performance, and network configurations are unaffected. New benchmark tests are conducted and compared to the pre-upgrade benchmarks. A final hardware upgrade results and findings document is then composed and presented to the stakeholders.

### 3.3 Problem Resolution and Escalation Process.

3.3.1 Contractor must have a documented problem resolution and escalation procedures.

3.3.2 Contractor's Problem Resolution and Escalation Process is as follows:

3.3.2.1 Procellis Technology's Client Services leads Contractor's customer service and support experience for sales as well as problem resolution and escalation. All resolution and escalation issues are processed through Contractor's Support Desk to provide a means to identify, track and resolve issues through to resolution.

3.3.2.2 The ordering entity should bring any issues or inquiries to the attention of a dedicated Customer Sales Rep. The Sales Rep shall document the ordering entities issue or inquiry, and either correct the issue or escalate the issue to a Client Services if the Sales Rep cannot correct the issue.

3.3.2.3 The Client Services must evaluate the issues and determine the best next steps to remedy the issue.

3.3.2.4 If the Client Services cannot correct the issue, the issue must be escalated to the executive leader or owners until a suitable solution to the performance issue is provided.

3.3.3 For highly sensitive, critical issues, the procedure outlined in section 3.3.2 must be followed with expedited timelines.

4. **Maintenance.** Contractor must provide maintenance and support 24 hours a day, 7 days a week, 365 days a year.

### 5. **Warranty.**

5.1 Warranty Service. Contractor is responsible for coordinating warranty issues. The ordering entity has the option of dealing directly with the Manufacturer on any warranty issue if such ordering entity believes it to be in its best interest.

5.2 Delivery of Parts under Warranty. The Contractor must provide delivery of any in-stock part that is under warranty within three calendar days of the notification that a part under warranty must be replaced, or as required by any warranty or support plan, whichever is less. Any variation to this standard must be agreed upon by the ordering agency and the Contractor in writing at the time of notification.

5.3 Defective Products. All defective products, including parts, shall be replaced at no additional cost to the State per Exhibit A, Section 21.2 above.

5.4 Standard Manufacturer Warranty Repair Procedure.

5.4.1 Contractor has defined escalation processes with its manufacturer partners to ensure technical support is provided by the manufacturers according to the agreed upon SLAs.

5.4.2 When there is a standard manufacturer warranty issue, Contractor shall ensure that the manufacturer meets its SLA and delivers the full customer experience.

5.5 Warranty Tracking. Contractor will track warranty information for all leading vendor hardware through Professional Services Automation Software, which will provide real-time warranty information.

### 6. **Replacement Parts.**

6.1 Same Manufacturer. All replacement parts shall be from the same manufacturer as those removed in all instances, unless, the ordering entity agrees to a substitution in writing.

6.2 Certification. All replacement parts should be eligible for manufacturer's certification and warranty if equipment is returned to the manufacturer for repair.

## **7. Software.**

- 7.1 Contractor shall provide compatible software and licensing for all manufacturers provided. Contractor or any subcontractor must be trained on implementation of supporting software and will make appropriate recommendations when more than one option for supporting software is available.
- 7.2 Contractor's Pre-Sales Engineers and purchasing specialists shall carefully review and validate each quote to ensure complete licensing and software requirements are met prior to executing the sale.
- 7.3 Contractor shall provide tracking for software expiration dates, updates, or other required.

## **8. Contract Management and Service.**

- 8.1 Contract Phase-In Period. The Contractor must be prepared to provide product delivery and maintenance within ninety (90) calendar days of the effective date. This includes the ability to receive emailed purchase orders for the goods and services included in the contract, deliver the ordered hardware to location specified in the purchase order, and (if required) install and maintain said hardware.
- 8.2 In the event the schedule and transition process is not completed on the agreed date or the ninety (90) calendar day period, whichever is later, the State may, at its discretion, cancel the Contract.

## **9. Environmental Impact.**

- 9.1 Energy Star, EPEAT Registration, and TCO Certification.
  - 9.1.1 Energy Star Requirements.
    - 9.1.1.1 All servers and storage options offered under this contract must be Energy Star compliant.
    - 9.1.1.2 Contractor must indicate that its products are labeled as Energy Star compliant products on the website.
  - 9.1.2 EPEAT Registration.
    - 9.1.2.1 Contractor must indicate if the server is EPEAT registered on the website and provide the corresponding Tier level (bronze or silver).
  - 9.1.3 TCO Certification.
    - 9.1.3.1 Contractor must indicate if the server is TCO Certified on the website.
- 9.2 Server Recycling, Take-Back, and Disposal.
  - 9.2.1 Contractor partners with Tech Dump for secure disposal and recycling.
    - 9.2.1.1 When equipment is destroyed rather than re-used, the ordering entity may request a Certificate of Destruction (COD) as required by disposal for the ordering entity's use case, which may require an additional charge.
    - 9.2.1.2 Contractor agrees to facilitate equipment buy-back or credit for trade-in through multiple distribution channel partnerships and through its partnership with Tech Dump.
  - 9.2.2 Upon request by the ordering entity, Contractor may work with another vendor for secure disposal and recycling.
- 9.3 Data Sanitization. Contractor must follow the recommended NIST and DOD data sanitization procedures as described in NIST special publication 800-88 and DOD 5220-M standards and require that its disposal vendors follow the same procedures.
- 9.4 Energy Management.
  - 9.4.1 Contractor shall provide energy management solutions through its managed service.
  - 9.4.2 Contractor's Network Engineers and Development Team are familiar with IoT systems and will offer assessment of existing infrastructure as well as energy-conscious setup and management of new hardware implementation.
  - 9.4.3 Contractor's Network Technicians can implement custom energy management solutions by tailoring existing solutions to fit the specific environmental and technical requirements of each installation, and developers are available to assist with programming if full customization is required.
- 9.5 Packaging, Reduction, and Recycling.
  - 9.5.1 Contractor shall use its best efforts to use environmentally mindful packaging materials and utilize recycled or repurposed materials before using new packaging when shipping directly from its warehouse.

9.5.2 Contractor shall use its best efforts to use reusable shipping containers for inter-departmental deliveries and offer reusable shipping containers to ordering entities when this option is supported by Contractor's distributor or by the selected delivery method.

9.5.3 Contractor shall also request that its distributors use recycled materials for shipping when feasible.

## **10. Website Requirement.**

10.1 Within 90 days from the effective date, Contractor must establish and maintain a website for the State containing only the products on the Contract and said website must be approved in writing by the State.

10.2 This website must be dedicated to the Contractor's Contract with the State and be approved by the State in relation to the State's Accessibility Requirements.

10.3 The Contractor's dedicated website must contain, at a minimum, the following items:

10.3.1 State approved product list and specifications, UNSPSC code, configurations, service options, any service agreements, contact information for order placement, purchase order tracking, problem reporting, equipment maintenance, and billing concerns.

10.3.2 Specifically configured individual logins for each ordering entity who requests to purchase off this contract.

10.3.3 Online ordering and quoting, as well as tracking of current orders.

10.3.4 Online invoicing and payment options.

10.3.5 Product Solutions — User can compare with similar products or search and buy bundled products. The website will also suggest relevant products and recently view products.

10.3.6 Return Merchandise Authorization (RMA) can be requested.

## **11. Manufacturer Agreements.**

11.1 The Contractor must be an authorized manufacturer's reseller, and must be able to provide service, maintenance, and support for all proposed manufacturers' products, if allowed by the manufacturer.

11.2 Upon request by the State, Contractor must provide documentation of all manufacturer's authorizations, partnership levels, certifications, and qualifications.

11.3 The Contractor or any subcontractor used must not invalidate the manufacturer's warranty.

## **12. Reports.**

12.1 Quarterly Reports. The Contractor must provide quarterly reports to the State of Minnesota Office of State Procurement. Reports must contain at a minimum, State Contract number, quarterly dates, date ordered, date shipped, customer name, customer address, city, P.O number, product description, quantity ordered, List price or Cost, Contract discount or Contract percentage markup, Price after discount or Price after cost plus markup, and total dollars spent. The State may use this information or any other information as a part of the decision-making process regarding contract renewals. The Contractor must provide reports to the Customer upon request.

12.2 Sales Auditing. Contractor agrees to conduct self-audits and will provide quarterly sales reports that verify that the price paid by the ordering entity is the correct price at the time the order was issued.

12.3 Ad Hoc Reports. Upon request by the State or an ordering entity, Contractor agrees to provide reports that include the following information: Purchase history, license agreements and asset tracking. Said reports can also be downloaded in the following formats: Microsoft Excel, CSV, and tab-delimited files.

### **Exhibit C Supplements**

The following supplements to Exhibit C are attached and incorporated by this reference.

- Supplement 1: Server Minimum Standards
- Supplement 2: SAN Minimum Standards
- Supplement 3: Cloud Virtual Infrastructure Hosts Minimum Standards

[illegible]



Minimum Storage Area Network (SAN) Specifications	#1 SAN-XL	#2 SAN-L	#3 SAN-M	#4 SAN-C
<u>Specification</u>	<u>Minimum requirements</u>	<u>Minimum requirements</u>	<u>Minimum requirements</u>	<u>Minimum requirements</u>
Target Cost \$/TB (raw-no compression)	\$1,200	\$100	\$500	\$4,000
Target Latency milliSeconds	< 1 mS	<10 mS	<30 mS	<100 mS
Target IOPs	1000K	10K	5K	1K
Installed Raw Capacity (TB)	500 TB	100 TB	50 TB	10 TB
Drives Installed	180	56	24	12
Drive Capacity	4 TB	2 TB	2 TB	2 TB
Drive Speed - rpm (rotational)	7200	7200	7200	7200
Drive Type	3.5"	3.5"	3.5"	3.5"
Drive - Native Interface	SAS	SAS	SAS	SAS
Back-end Disk Channel Interface	Infiniband/PCIe	SAS	SAS	None
Expansion Options	60-drive enclosures	56-drive enclosures	24-drive enclosures	Public Cloud Gateway
Controllers	3	2	2	2
Number of NICS and Speed Required	qty(12) 10Ge qty(12) 8Gb FC qty(3) Out of Band Mgmt	qty(4) 10Ge qty(4) 8Gb FC qty(2) Out of Band Mgmt	qty(2) 10Ge qty(2) 8Gb FC qty(2) Out of Band Mgmt	qty(2) 10Ge qty(1) Out of Band Mgmt
Interface Options (ie. TOE, iSCSI)	FC, iSCSI, NFSv3/v4	FC, iSCSI, NFSv3/v4	FC/iSCSI	NFS
NIC's trunking / teaming required?	Yes	Yes	Yes	Yes
Storage replication support required?	Yes	No	No	Yes, To cloud
Operating Systems - licensed and supported	Windows, vSphere, RHEL	Windows, vSphere, RHEL	Windows, vSphere, RHEL	Windows, RHEL
Operating System - snapshot option required?	Yes	No	No	No
Operating System - host and capacity licensing	Capacity on Demand Licensing	Fixed Capacity Licensing	Fixed Capacity Licensing	Public Cloud Capacity Licensing
Chassis - Height (U)	42U	4U	2U	1U
Chassis Type	Rack	Rack	Rack	Rack
Power Type	208V NEMA 30A 3phase 5.5KW	120V 10A Single Phase 1050W	120V 8A Single Phase 800W	120V 6A Single Phase 700W
Power - BTU Rating	20,000	5,000	3,000	2,000
Warranty on Hardware	3 year 24x7	3 year 24x7	3 year 24x7	3 year 24x7
Warranty on Software	3 year 24x7	3 year 24x7	3 year 24x7	3 year 24x7
Power - Redundancy	Required	Required	Required	Required



Minimum Cloud Virtual Infrastructure Hosts Specifications	#1 VMware Cloud Foundation HCL certified	#2 VMware Cloud Foundation HCL certified	#3 VMware Cloud Foundation HCL certified
Specification	Minimum requirements	Minimum requirements	Minimum requirements
Processor Socket(s)	2	2	2
Processor	Intel(R) Xeon(R) Gold 6148 CPU @ 2.40GHz - 2.4 GHz 6148/150W 20C/27.50MB Cache/DDR4 2666MHz	Intel(R) Xeon(R) Gold 6148 CPU @ 2.40GHz - 2.4 GHz 6148/150W 20C/27.50MB Cache/DDR4 2666MHz	Intel(R) Xeon(R) Gold 6148 CPU @ 2.40GHz - 2.4 GHz 6148/150W 20C/27.50MB Cache/DDR4 2666MHz
RAM - Installed Capacity (GB)	512 GB	512 GB	512 GB
RAM - Type, Speed (MHz)	DDR4-2666-MHz RDIMM/PC4-21300/dual rank/x4/1.2v	DDR4-2666-MHz RDIMM/PC4-21300/dual rank/x4/1.2v	DDR4-2666-MHz RDIMM/PC4-21300/dual rank/x4/1.2v
RAM - Configuration (amount x dimm)	16 X 32 GB	16 X 32 GB	16 X 32 GB
RAM - Maximum Expandability (GB)	3,072 GB	3,072 GB	3,072 GB
RAM - Memory Slots	24	24	24
Hard Drive(s) Installed	2 X 64GB SD Card for ESXi boot & 6 X 3.8TB 2.5 inch Enterprise Value 6G SATA SSD for vSAN	2 X 64GB SD Card for ESXi boot & 6 X 3.8TB 2.5 inch Enterprise Value 6G SATA SSD for vSAN	2 X 64GB SD Card for ESXi boot & 6 X 3.8TB 2.5 inch Enterprise Value 6G SATA SSD for vSAN
Hard Drives - hot swappability required or not required	Hot Swappability Required	Hot Swappability Required	Hot Swappability Required
Maximum Disks Supported	10	10	10
Disk Controller	12G Modular RAID controller with 2GB cache	12G Modular RAID controller with 2GB cache	12G Modular RAID controller with 2GB cache
Raid (Hardware)	Required (1,5 & 6)	Required (1,5 & 6)	Required (1,5 & 6)
Fiber Channel Support	Required	Required	Required
Network	Intel X710-DA2 dual-port 10G SFP+ NIC	Intel X710-DA2 dual-port 10G SFP+ NIC	Intel X710-DA2 dual-port 10G SFP+ NIC
Slots	1 (free) x PCIe 3.0 x24 - three-quarter-length, full-height (x16 mode), 1 (total) / 1 (free) x PCIe 3.0 x24 - half-length, half-height (x16 mode / NCSI support)	1 (free) x PCIe 3.0 x24 - three-quarter-length, full-height (x16 mode), 1 (total) / 1 (free) x PCIe 3.0 x24 - half-length, half-height (x16 mode / NCSI support)	1 (free) x PCIe 3.0 x24 - three-quarter-length, full-height (x16 mode), 1 (total) / 1 (free) x PCIe 3.0 x24 - half-length, half-height (x16 mode / NCSI support)
Video	VGA	VGA	VGA
USB Ports - total	2 x USB 3.0 (2 rear)	2 x USB 3.0 (2 rear)	2 x USB 3.0 (2 rear)
USB Ports - front side and internal	0	0	0
Warranty	3 year warranty	3 year warranty	3 year warranty
Form Factor	Rack Mountable with Railkit	Rack Mountable with Railkit	Rack Mountable with Railkit
Device Height	1U	1U	1U
Power	Power Cord, 250 VAC 10A, C14-C13 Connectors	Power Cord, 250 VAC 10A, C14-C13 Connectors	Power Cord, 250 VAC 10A, C14-C13 Connectors
Power Requirements - single phase or three phase	Single	Single	Single
Power - three phase	Responder to specify if available	Responder to specify if available	Responder to specify if available
Power Redundancy to Support Base Configuration	yes 2-PS's	yes 2-PS's	yes 2-PS's
Enterprise Hardware Management Toolset	Required, vendor agnostic	Required, Cisco Intersight	Required, Dell Open Manage
Component(s) Requirement/ Cert	All components must be VMware Cloud Foundation HCL Certified	All components must be VMware Cloud Foundation HCL Certified	All components must be VMware Cloud Foundation HCL Certified

Exhibit D: Pricing

1. Contract Pricing.

1.1 In General. Prices listed take into consideration all inherent costs of providing the requested goods and services. The Contractor agrees to pay any and all fees, including, but not limited to: duties, custom fees, permits, brokerage fees, licenses and registrations, government taxes, overhead, profit, parking permits, proper disposal of materials, insurance payments. The State will not pay any additional charges beyond the price(s) listed, unless otherwise provided for by law or expressly allowed by the Contract. Prices listed within Exhibit D are the maximum prices. These maximum prices shall remain firm for the initial term of the Contract. The Price List may not include any additional terms or conditions. A unit price and a total for the quantity must be stated for each item quoted. Prices must be quoted in United States currency. Any increase to Contract pricing or increase of cost-plus percentage require a duly executed amendment to this Contract. Contractor may provide lower pricing at its discretion without requiring a duly executed amendment to the Contract.

1.2 Cost-Plus Pricing. Cost is defined as the actual cost the Contractor pays the supplier for goods or services the State orders, minus any applicable taxes. Only costs specifically detailed in the billing statement, quote, or invoice from the supplier will be subject to the cost-plus percentage detailed on Contract. If a quote is issued, the invoice price cannot exceed the quoted price.

The product purchase price from the supplier must be verifiable with a quote, billing statement, or invoice upon request from the State or Ordering Entity.

The cost-plus pricing must be computed in the same manner as shown in the example below:

Product	Vendor Cost from Supplier	Cost Plus % Offered	Computation	State Contract Price
XYZ Tablet	\$300.00	3.5%	\$300.00 x 1.035 = \$310.50	\$310.50

1.3 Hourly Rate Pricing. This is the rate(s) detailed in the Contract for each service or category of service provided by Contractor. State will not pay for travel-related expenses, travel time, meals, lodging, fuel surcharges, trip charges, or idle time.

2. Installation Services.

The Contractor must apply a charge as a separate line item for installation or mounting services if such service is requested in writing by the ordering entity. The price for equipment, attachments, or options does not include installation or mounting costs unless otherwise indicated in the Contract or Price Schedule.

3. Price Schedule(s).

The following price schedule(s) are hereby attached and incorporated into this Exhibit D as follows:

3.1 Exhibit D, Supplement Two, Price Schedule

4. Transportation.

All prices must be FOB Destination, prepaid and allowed (with freight included in the price), to the ordering entity’s receiving dock or warehouse, or as otherwise instructed on the purchase order by the ordering entity. In those situations, in which the “deliver-to” address has no receiving dock or agents, the Contractor must be able to deliver to the person specified on the purchase order.

5. Prompt Payment Terms.

Contractor’s payment terms are 0.6% in 10, Net 30.

**6. Taxes.**

Do not add sales tax to the prices being offered. State Agencies hold a Direct Payment Authorization Letter which is used to pay applicable taxes directly to the Department of Revenue. Contractors may go to <http://www.revenue.state.mn.us> to learn about the applicable sales tax (search "Fact Sheet 142").

**Exhibit D, Supplement 1**  
**Sample Invoice and Quote**

Attached is a sample invoice and quote.

Contractor is required to use the sample quote and sample invoice for all transactions under this Contract. Contractor may not materially change either document unless the change has been approved in writing by the State's Authorized Representative. Contractor may not modify the sample quote or sample invoice to provide less detail regarding purchases under this Contract. Contractor hereby waives the right to enforce any term in either sample which contradicts or modifies any term of the solicitation or any Contract that may result, including subsequent amendments to the Contract, or would result in an unencumbered expense if enforced against the state or its CPV members. The State anticipates the sample quote and sample invoice will contain, at a minimum:

- Customer name
- State Contract number field
- Item/service description
- Item quantity or service hours
- Cost
- Contract percentage markup
- Price after cost plus markup



Sales Quotation  
Test XYZ

6820 Shingle Creek Pkwy #2, Minneapolis, MN 55430	Created Date	Expiry Date	Quote #
		Tuesday, June 11, 2024	10046

Name / Address	Ship to
State of Minnesota	State of Minnesota
400 Centennial Building	400 Centennial Building
658 Cedar Street	658 Cedar Street
Saint Paul, MN 55155	Saint Paul, MN 55155

Rep	Terms	Shipping Method	Contract #
Damian Young	Net-30	FedEx Ground	MN TEST


Details item information:

Product	Product Description	Qty	List Price	Vendor Cost	Cost-Plus %	Contract Price
Test Product XYZ	Test Product XYZ Tablet for MN State Contract	1	\$100.00	\$80.00	11.5%	\$89.20

TOTAL:

Note:

Summary

Summary				\$89.20
Product		Quantity	Price	Amount
	Test Product XYZ	1	\$89.20	\$89.20

Subtotal	\$89.20
Shipping	\$0.00
<hr/>	
Tax	\$0.00
<hr/>	
Total	\$89.20



(844) 721-2701 | support@procellis.com

www.procellis.com | MN TG/(S)VO /CERT

Procellis Technology, Inc.  
6820 Shingle Creek Pkwy #2  
Minneapolis, MN 55430

Invoice 12345

<b>BILL TO</b> State of Minnesota 400 Centennial Building 658 Cedar Street Saint Paul, MN 55155	<b>SHIP TO</b> State of Minnesota 400 Centennial Building 658 Cedar Street Saint Paul, MN 55155	<b>DATE</b> 05/29/2024	<b>PLEASE PAY</b> \$89.20	<b>DUE DATE</b> 06/28/2024
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**CONTRACT #**  
MN TEST

PRODUCT	DESCRIPTION	QTY	RATE	AMOUNT
Test Product XYZ	Test Product XYZ Cost \$80.00 Mark Up 11.5%	1	89.20	89.20

Contact Procellis Technology, Inc. to pay.  
|WWW.PROCELLIS.COM|  
|EMAIL: AR@PROCELLIS.COM|  
|OFFICE: 763-219-4187|  
  
|MN/TG(S)VO /CERT|

<b>TOTAL DUE</b>	<b>\$89.20</b>
THANK YOU.	

REMIT PAYMENT via mail to:  
PROCELLIS TECHNOLOGY INC  
6820 Shingle Creek Pkwy #2  
Minneapolis, MN 55430

REMIT ACH payment:  
Bank of America  
Routing No: 063000047  
REF: Account: 898030289401

**Exhibit D, Supplement 2**  
**Price Schedule**

Exhibit D, Supplement 2, Price Schedule is attached and incorporated by this reference.



Server	
Manufacturer	Cost Plus %
Acer	11.50%
Asus	11.50%
Celestica	11.50%
Cisco	11.50%
Dell	11.50%
Fujitsu	11.50%
HPE (HP Enterprise)	11.50%
IBM	11.50%
Lenovo	11.50%
NEC	11.50%
Oracle	11.50%
Quanta	11.50%
Super Micro Computer	11.50%
Toshiba	11.50%

Storage Area Network (SAN)	
Manufacturer	Cost Plus %
Cisco Storage	11.50%
Dell	11.50%
Fujitsu	11.50%
HPE (HP Enterprise)	11.50%
IBM	11.50%
Infinidat	11.50%
Netapp	11.50%
Pure Storage	11.50%

Storage Area Network (SAN)	
Manufacturer	Cost Plus %
Cisco	11.50%
Dell	11.50%

Software		
Manufacturer	Product Line	Cost Plus %
Acronis	Cyber Backup	11.50%
Acronis	Disaster Recovery Service	11.50%
Cohesity	Data Protect	11.50%
Commvault	Complete Data Protection	11.50%
Commvault	Backup and Recovery	11.50%
Commvault	Disaster Recovery Service	11.50%
Rubrik	Cloud Data Management	11.50%
StorageCraft	ShadowXafe	11.50%
Veeam	Backup and Replication	11.50%
Veritas Technologies	NetBackup	11.50%
CradlePoint	Cloud Emergency Connectivity	11.50%
Sierra Wireless	Cloud Emergency Connectivity	11.50%
Arctic Wolf	Cloud Monitoring Risk and Response	11.50%
Microsoft	Cloud Computing	11.50%
AWS	Cloud Computing	11.50%
Google	Cloud Computing	11.50%
VMware	Cloud Computing	11.50%
Nutanix	Cloud Computing	11.50%

Services		
Item	Cost	Unit of Measure
Installation/Moves - Hardware	\$195.00	per hour
Installation - Software	\$240.00	per hour
Asset Tagging	\$140.00	per hour
Imaging	\$175.00	per hour
Break Fix	\$175.00	per hour
Staging / Deployment	\$140.00	per hour
Standard Software Customization	\$350.00	per hour
Storage System Consulting	\$315.00	per hour