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| primary logo | State of Minnesota Contract | |
| SWIFT Contract No.: | | |  | | --- | | f | |

This Contract is between the State of Minnesota, acting through its Commissioner of the Department of Employment and Economic Development” (“State”) and [Contractor] whose designated business address is [Contractor’s business address] (“Contractor”). State and Contractor may be referred to jointly as “Parties.”

**Recitals**

1. Under Minn. Stat. § 15.061, 116J.035 and 268A, the State is empowered to engage such assistance as deemed necessary.
2. The State issued a solicitation identified as Medical Consultants on [Solicitation date] to perform medical reviews of disability claims for Minnesotans who have applied for Social Security Disability benefits (“Solicitation”);
3. Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of the State;
4. Contractor is not an employee of the State and will not be an employee of the state by performing the services covered by this Contract;
5. Contractor understands the legal responsibilities, including federal and state income taxes, Federal Insurance Contribution Act and Workers’ Compensation obligations that are incumbent on the Contractor operating under this Contract as an “independent contractor”; and
6. 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**

# Term of Contract

## Effective date. [Spell out full date (e.g., April 1, 2019)], 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.

## Expiration date. [Spell out full date (e.g., March 31, 2020)], or until all obligations have been satisfactorily fulfilled, whichever occurs first. The Contract may be extended for up to an additional four (4) years, in increments as determined by the State, through a duly executed amendment.

# Contractor’s Duties

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

The Contractor, who is not a State employee, shall:

## Review and evaluate medical case file data in accordance with Social Security Administration (“SSA”) policy and guidelines and within State production and quality standards. Minimum productivity expectations are two (2) completed cases per hour for physical consultations and one and one-half (1.5) cases per hour for psychological consultations. A request for more development counts for one‑half (0.5) of a completed case. Time spent on duties unrelated to production such as training/phone calls/meetings/case consults etc. is not included in productivity calculations.

## Respond, in accordance with agency policy and guidelines, to written and/or oral queries from the disability examiner staff and others regarding specific case related medical or psychological issues.

## Provide, as needed and in accordance with SSA policy and procedures, statements regarding a claimant’s residual level of functioning.

## Obtain, when necessary, additional medical information via telephone contact with a treating or consulting medical resource.

## Prepare and present medical in-service lectures to new and existing Disability Determination Services (“DDS”) staff, keep abreast of new and existing medical policies and procedures in the Social Security Disability program.

## Use the computer as needed to fulfill SSA and DDS requirements. Efficient use of the computer to satisfy the standards set forth in item 2.1.

## Successfully complete the Presidential Homeland Security Directive 12 (HSPD-12) background verification process to acquire access to the federal information systems needed to perform disability medical review services.

## Not perform any private services, or services not authorized under this Contract, using the State/Federal provided equipment, including but not limited to telephone and computer, or perform any private services, or services not authorized under this Contract while on State premises or on the SSA’s Federal secured network.

## Act in a professional manner when performing services under this Contract, being civil in all dealings with State employees, ethical in the performance of services under this Contract and not breach any confidentialities.

## Maintain all required medical licensing required by applicable laws and regulations during the term of this Contract. Contractor is solely responsible for any costs associated with maintaining licensure.

## Agree not to preform consultative examinations for the Minnesota DDS without prior approval, in accordance with 20 C.F.R. 404.1519q.

## Agree to perform all case reviews on SSA’s secured network.

## Physical and psychological consultants will review and sign, as appropriate and as required by Federal regulations, completed disability determination (SSA-831, SSA-833, SSA-834).

## Speech/Language medical advisors will assist disability examiners, medical consultants and psychological consultants with speech/language issues and provide analysis pertaining to issues related to speech/language impairments.

## At any time during the award and contracting process should the contractor be named in an investigation, internal or outside DEED, the contractor’s pending contract will be placed on hold. If following the investigation termination occurs, for matters including but not limited to licensure, disciplinary action, failed background check, failure to pay taxes, DEED will cancel the contract and the seven (7) day contract cancellation policy will not apply.

# Representations and Warranties

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

## 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.

## 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.

# 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. Travel time, personal errands, breaks, and meal times are not included in consideration of services performed by the Contractor.

# Consideration and Payment

## Consideration. The State will pay for performance by the Contractor under this Contract as follows:

### Compensation. The Contractor will be paid at the hourly rate for the hours worked and invoiced, not to exceed the hours defined in Attachment A, Notice of Hours Available (“NHA”), that is incorporated into this contract in its entirety. Contractor submits invoices monthly.

### Attachment A, NHA designates the allocation of hours allowable within respective quarters and a range of hours per year for the length of the Contract. The Contractor will not exceed the quarterly hours stated in Attachment A without the express written consent of Milla Kokotovich, or his/her successor. Contractor will not exceed the yearly range specified in the Contract without the express written consent of Milla Kokotovich, or his/her successor.

### Should the Contractor receive approval for hours in excess of the yearly range, Contractor will be allowed to work the additional hours, as provided by an amendment to Attachment A.

### Contractor is responsible for developing and maintaining their quarterly hours of work in a manner that will ensure the consistent continuation of services necessary to provide efficient and timely disability adjudications. Significant breaks in service hours during any given quarter must be approved by Milla Kokotovich, or his/her successor. Compensation will be paid only for performance of the Contractor’s duties specified in Clause 2 of this Contract. The Contractor will not be paid under this Contract for time spent preparing for or participating in court or administrative proceedings, including hearings, depositions, or other pretrial activities.

### Total obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed $ [##].

## Payment.

### Invoices. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed, and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and include only agency consultant related duties excluding travel time, personal errands, breaks and meal times.

### Retainage. The Commissioner or Administration has agreed to waive the retainage requirements under Minnesota Statutes Section 16C.08, subdivision 2(10).

### Conditions of payment. All services delivered 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.

### Federal Funds. (Payments under this contract will be made from federal funds obtained by the State through Titles II and XVI of the Social Security Act of 1935, CFDA number 96.00, (Public Law 74-271 as amended). The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requires imposed by the Contractor’s failure to comply with federal requirements.

# Authorized Representative

## The State's Authorized Representative is Milla Kokotovich, 651-259-7781, or his/her successor or delegate, and has the responsibility to monitor the Contractor’s performance and the authority to accept the services provided under this Contract. If the services are satisfactory, the State’s Authorized Representative will certify acceptance on each invoice submitted for payment.

## Contractor’s Authorized Representative. The Contractor's Authorized Representative is [name, title] at the following business address and telephone number: [insert business address and telephone number], or his/her successor. If the Contractor’s Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

# Exhibits

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

Exhibit A: Contract Terms

Exhibit B: Insurance Terms

Exhibit C: Specifications, Duties, and Scope of Work

Exhibit D: Price and Payment Schedule

Attachment A: Notice of Hours Available

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| **1. State Encumbrance Verification *Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05*** | | | | | | |  | **3. State Agency *With delegated authority*** | | | | |
| Print name: | | |  | | | |  | Print name: | |  | | |
| Signature: | |  | | | | |  | Signature: | |  | | |
| Title: |  | | | | Date: |  |  | Title: |  | | Date: |  |
| SWIFT Contract No.: | | | |  | | |  |  | | | | |

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| **2. 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.*** | | | | | |  | **4. Commissioner of Administration *As delegated to The Office of State Procurement*** | | | | |
| Print name: | | |  | | |  | Print name: | |  | | |
| Signature: | |  | | | |  | Signature: | |  | | |
| Title: |  | | | Date: |  |  | Title: |  | | Date: |  |

Exhibit A: Contract Terms

# Prompt Payment and Invoicing.

## 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 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.

## 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.

# Assignment, Amendments, Waiver, and Contract Complete.

## 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.

## 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.

## 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.

## 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.

# Termination.

## Termination for Convenience. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 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.

### With Cause. The State or Commissioner of Administration may cancel this Contract at any time with cause, including, but not limited to issues related to health, security, threats, and data privacy. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed. The seven (7) days’ written notice does not apply.

### Without Cause. The State or Commissioner of Administration may cancel this Contract at any time without cause, upon seven (7) days’ written notice to the Contractor. Contractor may not work more than authorized in Attachment A, NHA during the 7-day period notice. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

## Termination for Breach. The State may terminate this Contract, with cause, upon 30 days’ written notice to Contractor of the alleged breach and opportunity to cure. If after 30 days, the alleged breach has not been remedied, the State may immediately terminate the Contract.

## 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.

## Termination by Mutual Consent. The State and the Contractor may terminate this Contract at any time by written agreement.

## Termination following Investigation. The State may immediately terminate this Contract following investigation, which determined probable cause was evident. The seven (7) days’ written notice will not apply.

# 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.

# Indemnification.

## 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.

## 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.

# 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.

# Outsourcing of Work Prohibited.

All services under this Contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by all subcontractors.

# Subcontracting and Subcontract Payment.

# The use of subcontractors in the performance of the duties described in this Contract is strictly prohibited.

# 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.

# 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.

# Intellectual Property Rights.

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

### “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.

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

### “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.

## 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.

## 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.

## Obligations.

### 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.

### 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.

### 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.

# 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.

# 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.

# 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.

# 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.

# Publicity and Endorsement.

## 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.

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

# 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.

# Federal Funds.

## Compliance with Federal Requirements. Federal money will be used to pay 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.

## Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Federal money will 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.

# 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.

# 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.

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

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

# 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 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.

# Affirmative Action Requirements

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

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

## 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.

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

AFFIRMATIVE ACTION FOR DISABLED WORKERS

### 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.

### 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.

### 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.

### 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.

### 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.

## 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.

## 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.

# 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.

# 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.

1. **Vaccination/Testing Requirements**
   1. **Applicability**. This section applies to Contractor’s employees who are performing contracted work in the following types of project settings: indoors with regular in-person contact with State agency employees or members of the public; and outdoors with substantial and/or regular in-person, non-socially distanced contact with State agency employees or members of the public (“Covered Individuals”).
   2. **Requirements**. In accordance with [HR/LR Policy #1446](https://mn.gov/mmb-stat/policies/1446-covid19testingvaccination.pdf), Covered Individuals must be fully vaccinated against COVID-19 as defined in the policy or submit to testing at least once a week.
   3. **Compliance.** Contractor is responsible for the following:
      1. Tracking and maintaining proof of vaccination status;
      2. Ensuring, if Contractor is not vaccinated, Contractor is tested on a weekly basis;
      3. Monitoring test results and ensuring that Contractor with positive test results does not access the State workplace to perform contractual services until Contractor has been medically cleared; and
      4. Ensuring Contractor does not access the location where the contracted work is occurring if the Contractor is not in compliance with the requirements stated in item 26.2 Requirements, above.
   4. **Reporting.** Upon request, Contractor shall provide the State with documentation demonstrating compliance with these requirements. Contractor shall maintain documentation for a minimum of thirty (30) days past the end date of the Contract.

Exhibit B: Insurance Requirements

# Notice to Contractor.

## 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.

## 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

## 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.

## 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.

# Notice to Insurer.

## 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.

## Insurance certificate holder should be addressed as follows: [Add agency contract holder’s address below.]

## [Insert Agency Mailing Address]

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

## 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.

## 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;

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

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

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

## 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.

## 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.

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

## **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.

Exhibit C: Specifications, Duties, and Scope of Work

**This page is intentionally left blank. See description in Contract Section 2.**

Exhibit D: Pricing

**This page is intentionally left blank. See description in Contract Section 5.**

Exhibit D, Supplement 1  
Sample Invoice

Attached is a sample invoice.

Contractor is required to use the 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 invoice to provide less detail. Contractor hereby waives the right to enforce any term 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 invoice will contain, at a minimum:

* + Contractor name
  + Contractor address
  + Swift Purchase Order ID
  + Swift Contract ID
  + Program name
  + Payment details section addressing number of hours worked on each day of the month
  + Contractor Signature and date of signature

Exhibit D, Supplement 1  
Sample Invoice



Attachment A: Notice of Hours Available (“NHA”)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| PERIOD | QTR | HOURS | INCREASE / DECREASE | TOTAL YEARLY HOURS REQUESTED | HOURLY RATE | YEAR TOTAL AMOUNT |
| FY\_\_  07/01/20\_\_ - 06/30/20\_\_ | 1  2  3  4 |  |  |  | $ | $ |
|  | $ | $ |
|  | $ | $ |
|  | $ | $ |

**Total FY\_\_ REQUESTED $ $**

**FY\_\_ RANGE AMOUNT $ $**

**MAXIMUM TOTAL AWARD $ $**

**TOTAL: $**