

HENNEPIN COUNTY
MINNESOTA

Standard Terms and Conditions



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1. DEFINITIONS

“Affiliates” – Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (1) either one controls or has the power to control the other, or (2) a third-party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

“Contract Documents” – These Standard Terms and Conditions; the Purchase Order(s); all of the documents in the bid solicitation package, as applicable, including but not limited to the following: Instructions to Bidders, Special Terms and Conditions, specifications, drawings, exhibits, attachments, addenda, and any other documents, comments, or descriptions which County references in the solicitation; Contractor's bid, as applicable; and other County forms, as applicable.

“Contractor” – The person, firm, corporation, or other entity who enters into a contract with County to furnish Goods and/or services.

“County” – The County of Hennepin, a political subdivision of the State of Minnesota.

“Goods” – Tangible items. Includes commodities, products, materials, supplies and equipment.

“Notice of Award” – Written notification from the Purchasing Manager to a vendor conditionally awarding or awarding the contract.

“Performance Bond and/or Payment Bond” – A form of security executed by Contractor that guarantees the proper performance of the contract, the payment of debts to persons furnishing services or materials on account of the contract work, and the payment of certain other responsibilities of Contractor.

“Purchase Order” – A document issued by County to initiate a purchase transaction with Contractor. Purchase Orders include and are governed by these Standard Terms and Conditions.

“Purchasing Director” – County representative who manages the Purchasing and Contract Services department and has been delegated the authority to award most contracts for Goods and services that have been solicited by bid, or their designee.

“Software” – , Contractor provided software/application products that are identified in the Contract Documents or that are otherwise provided hereunder, including software embedded in Goods, along with all Software updates that, at least, are made available to Contractor's similarly situated customers.

“Subcontractor” – A person, firm, corporation, or other entity hired by Contractor to perform hereunder.

2. SCOPE OF WORK, COMMENCEMENT OF WORK

2.1. Scope of Work

- a. Contractor shall provide the Goods and/or services specified within the Contract Documents.
- b. County reserves the right to award other contracts, use any other contractor, or perform the work with its own employees for the provision of the Goods and/or services hereunder.

2.2. Purchase Order

- a. A Purchase Order will be used as County's document to initiate a purchase transaction with Contractor. Contractor shall not provide Goods and/or services hereunder until Contractor receives a Purchase Order. If Contractor provides Goods and/or services without an approved Purchase Order, County shall have no liability or obligation to Contractor for the unapproved Goods and/or services.
- b. There will be no minimum order requirements or charges to process an individual Purchase Order unless otherwise specified in the Contract Documents.
- c. County may cancel a Purchase Order by providing written notice to Contractor. County will pay for documented specific and direct costs that have been incurred under the Purchase Order prior to the effective cancellation date. Contractor shall make best efforts to minimize the costs and wind down the Purchase Order.

2.3. Expansion of Scope of Work

The contract may be expanded as mutually agreed. Such expansion must be approved in writing by the Purchasing Director. The following criteria will be collectively considered: (1) the change is for a reasonable purpose; (2) the change was not reasonably known to County at the time the Contract Documents were developed or was mentioned as a possibility in the Contract Documents (e.g. change in regulation or law); (3) the change is not significant enough to be reasonably regarded as an independent body of work; (4) the change could not have attracted a different field of competition; and (5) the change does not modify the main purpose of the contract. The Purchasing Director shall make this determination, and may take exceptions for immaterial changes, emergency, or sole source conditions, or for other situations in the opinion of the Purchasing Director. Certain changes are not considered an expansion of scope, including an increase in quantities ordered or the exercise of options or alternates in any Contract Documents. Notwithstanding anything to the contrary, County reserves its right to expand a contract if it determines that it is in County's best interest.

2.4. Adjustments to Scope of Work

The Purchasing Director may make reasonable changes in the destination address, installation, testing, inspection, shipment method, packing, labeling, invoicing, and ancillary matters that Contractor may accommodate without additional expense to County.

2.5. Submittals

No portion of the Goods and/or services shall be provided or commenced that requires submission of a shop drawing, manufacturer's literature, test data, a sample, or other information until the submittal has been approved by County.

2.6. Buy vs. Lease

Contractor shall notify County if the projected rental of the Goods equals or exceeds eighty percent (80%) of the purchase price of the Goods. County will determine if it is in its best interest to purchase the Goods.

2.7. License Grant Software

- a. If applicable and unless the parties otherwise agree in writing, Contractor hereby grants to County a fully paid-up, irrevocable, nonexclusive, perpetual license to use the licensed Software, in connection with County's business in a manner configured by County plus any licensed Software which shall be added to the Software and to make reasonable copies for back-up and training.
- b. Any other license terms and conditions supplied by Contractor with the Software (e.g. "shrinkwrap", installation screen license terms, terms contained on an order form or invoice) or otherwise shall have no effect and are superseded by the Contract Documents.

3. PERFORMANCE

3.1. Shipping

- a. Contractor shall, at its own expense, pay and bear all freight charges, and bear the risk of transporting Goods to the destination designated by County. Title passes to County in accordance with Section 4.3(a).
- b. Shipping containers must be packed and shipped according to the requirements of common carriers, in a manner that ensures the least damage to Goods in transit. Labels must be affixed to all shipping containers showing: (1) destination address; (2) Purchase Order number; and (3) Goods name. Labeling of hazardous substances must also comply with labeling requirements stated in applicable law, including but not limited to the Federal Hazard Communication Standard (29 CFR 1910.120) and the State's Employee Right-to-Know Act (Minn. Stat. section 182.65). Shipping containers, including individual containers within shipping containers, that contain a hazardous substance(s) must be tagged or marked with: (1) the identity of the hazardous substance(s); (2) the appropriate hazard warnings; and (3) the name and address of the chemical manufacturer, importer, or other responsible party.
- c. A packing list or other shipping document must accompany each shipment and show: (1) name and address of Contractor and Contractor's contact; (2) destination address; (3) Purchase Order number; (4) a description of Goods shipped, including catalog/Goods numbers, quantities, number of containers and container numbers, if any; and (5) consecutive numbering series and a list of missing numbers, if any.
- d. Contractor will be liable for any extra freight charges or damages that arise from failure to follow shipping and labeling instructions.
- e. County and Contractor will provide information or documentation within their knowledge or possession that would be reasonably helpful for the prosecution of claims or resolution of disputes with carriers.

3.2. Permits, Fees, Notices

- a. Unless otherwise specified by County in the Contract Documents, Contractor, at its own expense, shall secure all permits, fees, charges, duties, licenses, certifications, inspections, and other requirements and approvals necessary for the execution and completion of the contract.
- b. Contractor shall give all notices required under law, statute, ordinance, rule, and regulation.

3.3. Protection of Persons and Property

- a. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (1) persons at the site and other persons who may be affected thereby; (2) Contractor's work and materials and equipment which are under the care, custody and control of Contractor or any of Contractor's Subcontractors; and (3) other property at the site or adjacent thereto.
- b. Contractor shall promptly remedy damage or loss to property caused in whole or in part by Contractor, its employees, officers, agents or Subcontractors.

3.4. Supervision and Use of Site

- a. Contractor shall be responsible for the acts and omissions of its employees, officers, agents or Subcontractors ("Contractor's personnel").
- b. CONTRACTOR shall comply with COUNTY's rules, policy, and direction regarding use of COUNTY facilities. Contractor shall ensure that Contractor's personnel obey all County security rules at the site. Contractor shall at all times enforce professional behavior among Contractor's personnel at the site and shall not employ any unqualified person or anyone not skilled in the assigned task. County may deny access to any County facility at any time and may remove any Contractor's personnel from County facilities at any time and in County's sole discretion. Contractor shall not allow unauthorized personnel to use County facilities.
- c. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and specified in the Contract Documents and shall not encumber the site with any materials or equipment.

3.5. Clean Up

Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations.

3.6. Time is of the Essence

This is a time is of the essence contract.

3.7. Delays; Extension or Suspension of Performance

- a. Contractor's requests for delays in providing Goods and/or services hereunder may be granted by the Purchasing Director on a case-by-case basis.
- b. County shall have the right to suspend the delivery of Goods or performance of services, or any part thereof, for: (1) non-compliance with the provisions of the Contract Documents; (2) refusal and/or the failure to carry out the requirements of the contract; or (3) public safety reasons.

County will provide written notice to Contractor regarding the reason(s) for such suspension. The provision of Goods and/or services shall be suspended until such time as the reason for the suspension has been corrected to County's satisfaction. Suspension pursuant to the foregoing shall not limit or modify the other rights available to County hereunder or by applicable law.

3.8. Affiliate Purchases

Purchases of Goods and services made by an Affiliate of Contractor, where the costs of the purchase are passed through to County, shall be made competitively and comparable to similar or exact types of purchases in the open market. Affiliates will not be considered Subcontractors or independent businesses to Contractor. Contractor shall notify County of all Affiliate transactions. Upon County's request, Contractor shall provide detailed documentation to verify that Affiliate purchase prices are comparable to similar or exact types of purchases in the open market.

4. ACCEPTANCE OR REJECTION

4.1. Inspection

Contractor's Goods and/or services shall be subject at all times to inspection and approval by County. Contractor shall provide sufficient, safe, and proper facilities and equipment for the making of such inspection and free access to such facilities and equipment. However, the making (or failure or delay in making) of such inspection or approval shall not relieve Contractor's responsibility for providing Goods and/or services in accordance with the Contract Documents.

4.2. Acceptance, Rejection of Goods and Services

County shall not be obligated to pay any amount for any Goods and/or services provided hereunder until County has accepted the same. Goods and/or services shall not be deemed accepted until County completes receipt, inspection and acceptance upon County's determination of conformance to the Contract Documents. County may reject Goods and/or services upon notice to Contractor without the requirement to specify the reason(s) for rejection. County may return non-conforming Goods, require Contractor to replace non-conforming Goods, or require Contractor to repair non-conforming Goods to meet requirements, at Contractor's cost. County may demand that Contractor re-perform non-conforming services.

4.3. Title – Risk of Loss

- a. Title to Goods and all associated documentation whatsoever shall pass to County upon County's acceptance.
- b. County shall be relieved from all risks of loss or damage to Goods and Software during periods of transportation and installation and during the entire time the Goods and Software are in the possession of County until acceptance thereof by County. Upon acceptance by County, the risk of loss or damage to said Goods and Software shall pass to County. Contractor shall not be responsible for loss or damage to Goods and Software occasioned by negligence of County or its employees.

5. PRICES AND PAYMENTS

5.1. Contract Prices

Contract prices shall include all costs to provide the Goods and/or complete the services, including but not limited to, delivery/freight to the destination designated in the Contract Documents, handling, installation, assembly, insurance, licenses, and royalties.

5.2. Invoices

- a. Applications for payment may be in the form of Contractor's standard invoice. The invoice shall contain the Purchase Order number, Contractor's unique invoice number, the contract number, an itemized list and description of Goods and/or services provided hereunder, County's item number for each item (contained in the Contract Documents), the delivery destination, the date of shipment, and itemized sales tax, if applicable.
- b. Invoices containing any charge not specified in the Contract Documents will be rejected.
- c. Invoices containing any charge for Goods or services not specified in the Contract Documents will be rejected.
- d. Contractor shall submit invoices after the completion of services or acceptance of Goods.
- e. Contractor shall submit invoices within two (2) months of the completion of services or acceptance of Goods, to the accounts payable address specified in the Purchase Order.
- f. Contractor shall not submit invoices more than once a month unless otherwise specified by County.
- g. Claims made by Contractor are subject to the Minnesota False Claims Act.

5.3. Payments

- a. Payments shall be made in the manner provided by law for payments of claims and/or invoices.
- b. Payment shall be made within thirty (30) calendar days of date of receipt of an invoice in conformance with Section 5.2(a).
- c. No payment will be made for production overruns in excess of the quantity ordered by County.
- d. No payment shall constitute an acceptance of any Goods or services.
- e. County will consider discounts for early payment as stated within the Contract Documents.
- f. As required by Minnesota Statutes section 471.425, subd. 4a, Contractor shall pay any Subcontractor within ten (10) days of Contractor's receipt of payment from County for undisputed services provided by Subcontractor.
- g. County may withhold from any payment due to Contractor any amount which is due and owing County under this or any other agreement between the parties due to overpayment or as a result of an audit.

6. CONTRACT PERIOD

6.1. Initial Contract Period

Unless otherwise specified in the Contract Documents, the contract period shall commence on the day specified in the Notice of Award and shall terminate in twelve (12) months. The date that Contractor shall commence provision of Goods and/or services shall be the date established in a Purchase Order.

6.2. Extension

- a. Unless otherwise specified in the Contract Documents, the contract period may be extended for additional periods with the mutual consent of County and Contractor. The length of each extension period shall not exceed the length of the original contract period and each extension period shall be governed by the then current price, terms and conditions. If County desires to extend the contract, the Purchasing Director will so advise Contractor.
- b. If the parties have not mutually agreed to an extension period in writing, the parties may continue with a monthly extension with no change to the then current price, terms and conditions. The continuing performance of the contract shall represent each party's acceptance of the month-to-month extension.

7. DEFAULT AND REMEDIES

7.1. Default and Termination

- a. If Contractor: (1) is adjudged as bankrupt; or (2) makes a general assignment for the benefit of its creditors; or (3) has a receiver appointed on account of its insolvency; or (4) disregards any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or (5) refuses or fails, except in cases for which extension of time is granted, to provide Goods and/or services in accordance with the requirements of the Contract Documents; or (6) is otherwise guilty of a violation of any provision of the contract; then County may, without prejudice to any right or remedy and after giving Contractor, and its surety, if any, seven (7) calendar days written notice, terminate the contract.
- b. Upon written notice, County may immediately suspend or terminate this Agreement in the event any of the following occur: (1) County does not obtain anticipated funding from an outside source for the goods or services; (2) funding for the goods or services from an outside source is withdrawn, frozen, shut down, is otherwise made unavailable or County loses the outside funding for any other reason; or (3) County determines, in its sole discretion, that funding is, or has become, insufficient. County is not obligated to pay for any goods or services that are provided or costs or expenses or obligations incurred or encumbered after the notice and effective date of the suspension or termination. In the event County suspends or terminates this Agreement pursuant to this paragraph, County shall pay any amount due and payable prior to the notice of suspension or termination except that County shall not be obligated to pay any amount as or for penalties, early termination fees, charges, time and materials for services not then performed, costs, expenses or profits on work done.

- c. Either party may terminate the contract for any reason, with or without cause, upon ninety (90) calendar days prior written notice to the other party, unless otherwise specified by County in the Contract Documents.

7.2. Rights and Remedies

- a. Notwithstanding any provision of the contract to the contrary, Contractor shall remain liable to County for damages sustained by County by virtue of any breach of the contract by Contractor. Upon notice to Contractor of the claimed breach and the amount of the claimed damage, County may withhold any payments to Contractor for the purpose of set-off until such time as the exact amount of damages due to County from Contractor is determined. Following notice from County of the claimed breach, Contractor and County shall attempt to resolve the dispute in good faith.
- b. If Contractor fails to provide Goods and/or services to meet deadlines in accordance with the Contract Documents for any reason except delays caused by force majeure, County has the right to: (1) purchase those Goods and/or services on the open market, or purchase those Goods and/or services necessary to continue functioning until Contractor provides those Goods and/or services; and (2) to withhold any payments to Contractor for the purpose of set-off as the difference between Contractor's contract price and the higher price or the cost of temporary Goods and/or services paid for by County on the open market and any additional costs that County may incur. Any monies deducted are not a penalty but are damages to compensate for the additional costs incurred by County.
- c. Acceptance by County of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.
- d. If, as a result of any claim of infringement of rights, Contractor is enjoined from using, marketing, or supporting any Goods and/or services provided hereunder, or if Contractor comes to believe such injunction imminent, Contractor shall either arrange for County to continue using the Goods and/or services at no additional cost to County or propose another remedy subject to County approval. County alone will determine whether proposed substitutes are sufficiently equivalent. Subject to the provisions below, if no acceptable alternative is available even after Contractor's best efforts, Contractor shall return a pro rata portion of County's costs pertaining to the license fee, if any, and all consequential costs based on a period of five (5) years. If the Goods cannot operate in accordance with the Contract Documents without the Software, Contractor shall return a pro rata portion of County hardware cost based on a period of five (5) years unless a longer or shorter period is specified by County in the Contract Documents.
- e. County's failure to insist upon strict performance of any covenant, agreement, term, condition, or stipulation of the Contract Documents or to exercise any right contained therein shall not be a waiver or relinquishment of any such covenant, agreement, term, condition, stipulation, or right unless County consents thereto in writing. Any such written consent shall not constitute a waiver or relinquishment of the future of such covenant, agreement, term, condition, stipulation or right.
- f. All rights and remedies set forth in the Contract Documents are in addition to and not a limitation of any rights and remedies otherwise available under the order, law or equity.

8. INSURANCE, INDEMNIFICATION, LIABILITY AND BONDS

8.1. Contractor's Insurance

- a. With respect to the Goods and/or services provided hereunder, Contractor shall, at its sole expense, procure and maintain insurance of the types, and in the form and amounts described below from insurer(s) authorized to transact business in the state where services or operations will be performed by Contractor. Such insurance and required coverage shall be in forms acceptable to County. The insurance requirements described below shall be maintained uninterrupted for the duration of the contract and beyond such term when so required, and shall cover Contractor, and others for whom and/or to whom Contractor may be liable, for liabilities in connection with Goods and/or services provided for or on behalf of County, its agents, representatives, employees or contractors. Contractor is required to have and keep in force the following minimum insurance coverages or Contractor's actual insurance limits for primary coverage and excess liability or umbrella policy limits, whichever is greater:

Limits

- 1) Commercial General Liability (CGL) on an occurrence basis with contractual liability coverage (this coverage shall be written on the most current ISO (Insurance Services Office, Inc.) CGL form or its equivalent provided XCU (explosion, collapse and underground) is not excluded):

General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	2,000,000
Personal and Advertising Injury	1,500,000
Each Occurrence—Combined Bodily Injury and Property Damage	1,500,000

- 2) Workers' Compensation and Employer's Liability:

Workers' Compensation Statutory

If Contractor is based outside the state of Minnesota, coverage must comply with Minnesota law. County will accept self-insurance certificate of Contractor if Contractor is self-insured under Minnesota law. If Contractor is a sole proprietor, it is exempted from the above Workers' Compensation requirements to the extent provided by Minnesota law. In the event that Contractor should hire employees or subcontract this work, Contractor shall obtain the required insurance and submit an updated certificate.

Employer's Liability. Bodily injury by:

Accident—Each Accident	500,000
Disease—Policy Limit	500,000
Disease—Each Employee	500,000

- 3) Automobile Liability

If Contractor drives or operates an automobile in order to perform services under this Agreement, then Contractor shall maintain automobile liability and, if necessary, commercial umbrella insurance. Such insurance shall cover liability for bodily injury and property damage arising from the use or operation of any auto, including those owned, hired or otherwise operated or used by or on behalf of Contractor.

- b. An umbrella or excess policy is an acceptable method to provide the required commercial general or automobile insurance coverage.

Coverage shall not include any exclusion or other limitations related to:

- 1) Scope of work;
- 2) Delays in project completion and cost overruns;
- 3) Persons or entities authorized to notify the carrier of a claim or potential claim; or
- 4) Mold, fungus, asbestos, pollutants or other hazardous substances.

The above establishes minimum insurance requirements. It is the sole responsibility of Contractor to determine the need for and to procure additional insurance which may be needed in connection with the contract. Upon written request, Contractor shall promptly submit copies of insurance policies to County.

Contractor shall ensure that all of Contractor's subcontractors (i) independently carry insurance appropriate to cover the subcontractors' exposures and that meet or exceed Contractor's coverage limits; or (the Required Insurance Coverages set forth in the table above; (ii) are covered under the Contractor's policies; or (iii) or both. Contractor is responsible for monitoring its subcontractors' proof of insurance to ensure compliance with the foregoing obligations. Copies of certificates of insurance shall be maintained by Contractor and shall be supplied to County upon request.

Contractor shall not commence the provision of Goods and/or services until it has obtained required insurance and filed with County a properly executed Certificate of Insurance establishing compliance. The certificate(s) must name Hennepin County as the certificate holder, and as an additional insured for the commercial general liability and the automobile liability coverages required herein. The funding of deductibles and self-insured retentions (SIR) maintained by Contractor shall be the sole responsibility of Contractor. If the certificate form contains a certificate holder notification provision, the certificate shall state that the insurer will endeavor to mail to County thirty (30) day prior written notice in the event of termination of any described policies. If Contractor receives notice of termination from an insurer, Contractor shall email a copy of the notice to County within two business days.

Contractor shall furnish to County updated certificates during the term of the contract as insurance policies expire. If Contractor fails to furnish proof of insurance coverages, County may withhold payments and/or pursue any other right or remedy allowed under contract, law, equity, and/or statute.

If Contractor is unable to obtain a required insurance coverage, or if coverage is not renewed or is cancelled/terminated during the term of this Agreement, Contractor must immediately provide written notice to County as required by the provisions herein, Notices, of this Agreement. Contractor shall make immediate good faith efforts to obtain or replace the coverage in the open market. If such efforts are unsuccessful, Contractor shall immediately apply

to the Minnesota Joint Underwriting Association for the insurance coverage. Failure to maintain required insurance shall be considered an event of default pursuant to this Agreement.

Contractor's or, as applicable, subcontractor(s)' required insurance shall be primary insurance and any insurance or self-insurance maintained by County shall be in excess of and non-contributory with Contractor's insurance. Contractor waives all rights against County, its officials, officers, agents, volunteers, and employees for recovery of damages to the extent that damages are covered by insurance of Contractor. If necessary, Contractor agrees to endorse the required insurance policies to permit waivers of subrogation in favor of County.

If Contractor's subcontractor(s) independently carries insurance in accordance with the provisions herein, Contractor shall have a written agreement with its subcontractor(s) to pass-through all of the foregoing insurance obligations.

8.2. Indemnification/Claims

- a. Contractor shall defend, indemnify, and hold harmless County, its present and former officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of Contractor, a Subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the provision of Goods and/or services hereunder, and against all loss by reason of the failure of Contractor to perform any obligation hereunder. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of Contractor personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of the provisions set forth herein.
- b. In any and all claims against County or any of its officers or employees by an employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation of the amount or type of liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees.
- c. Contractor's obligation to defend, indemnify and hold harmless, as set forth herein, includes but is not limited to any liability, claims, suits, actions or proceedings resulting directly or indirectly from actual or alleged infringement of any patent, patent application, copyright, trade secret, trademark, trademark application, or other proprietary, licensing or intellectual property rights ("Intellectual Property Rights") of another. If such a claim, suit, action or proceeding may endanger or disrupt County's quiet use and enjoyment of the Software, Contractor shall, at Contractor's sole expense, achieve the following results in the listed order of preference: (1) secure for County the right to continue using the Software; or (2) replace or modify the Software to make it non-infringing without degrading its performance or utility; or (3) refund all monies paid by County to Contractor hereunder within thirty (30) days of said election, for any Software functionality or for any services that County is unable to use.
- d. In addition to the other "defend, indemnify and hold harmless" provisions in the Contract Documents, Contractor shall, without cost to County, defend, indemnify, and hold County, its commissioners, officers, and employees harmless against any and all claims, suits, liability, losses,

judgments, and other expenses arising out of or related to any claim that County's actual or alleged use or possession of Software, licenses, materials, reports, documents, data, or documentation obtained through the contract, violates or infringes upon Intellectual Property Rights or information. In no instance will Contractor settle any such claim, lawsuit, or proceeding without County's prior written approval. Contractor shall: (1) keep County informed of, and consult with County in connection with, the progress of any litigation or settlement; and (2) not settle any claim without County's written consent if such settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation, admission or acknowledgement of any liability or wrongdoing on the part of County.

8.3. Injury to Persons, Property Damage

Contractor shall be liable for damages to County property, or injury to County employees or any other person(s), prior to or subsequent to acceptance, delivery, installation or use of the Goods and/or services, provided that the injury or damage was caused by the fault or negligence of Contractor or caused by Contractor's Goods and/or services.

8.4. Performance and Payment Bonds

- a. Contractor may be required to provide a Performance Bond and/or Payment Bond. The surety and any reinsurance company of the bond must be licensed to do business in the State of Minnesota. The bond form will be supplied by County and the execution of the bond will be subject to approval by the County Attorney. Executed bonds must be returned to County before Goods and/or services can be provided hereunder.
- b. Should Contractor fail to provide the Goods and/or services hereunder, a claim may be made upon the Performance Bond. A Performance Bond, when so required, shall not preclude County from claiming damages on account of delay, price changes, loss of other contracts, loss of income, inability of County to fulfill other contracts, loss of other benefits of this contract, or other damages (including but not limited to cover damages), direct or consequential, arising out of breach of the contract or failure to perform the same by Contractor.

9. AFFIRMATIVE ACTION

9.1. Exemptions

Contractor may be granted an exemption from the requirements of this section for one of the following reasons:

- a. Contract is for emergency or life safety-related purchases;
- b. Contractor has no facilities and has no more than one employee operating within the geographic boundaries of Hennepin County;
- c. Contractor had an average of forty (40) or fewer full-time/benefit-earning employees during the twelve (12) months preceding the submission of the bid or execution of the contract; or
- d. Pursuant to Hennepin County Board policy, the County Administrator or their designee granted an exemption.

9.2. Requirements

In accordance with Hennepin County Board Resolution and subject to the applicable exemptions, if any, listed above, if the contract is for a sum over \$100,000 or is amended to exceed \$100,000, then Contractor shall abide by County's Affirmative Action requirements for County contractors. Those requirements, for purposes of the contract, are consistent with those imposed for state contractors pursuant to Minnesota Statutes, sections 363A.36 to .37 and Minnesota Rules, parts 5000.3200 to 5000.3600.

9.3. Compliance; Remedies

Unless Contractor qualifies for an exemption (above), Contractor shall demonstrate compliance by submitting and maintaining a workforce certificate from the Minnesota Department of Human Rights (MDHR), unless County provides for alternative certification. Contractor shall remain in compliance with all applicable requirements through the term of the contract. Contractor shall also provide all compliance documentation requested by the MDHR or by County, and shall cooperate with all compliance activities, including but not limited to site visits. If Contractor fails to demonstrate good faith efforts to correct any identified Affirmative Action deficiencies or fails to submit requested reports or information required by County or the MDHR, or has engaged in discriminatory practices, County may consider this a violation of the contract and may exercise any remedies available to it in law or in equity, including, but not limited to, termination of the contract.

10. NON-DISCRIMINATION

10.1. Policy

- a. In accordance with County's policies against discrimination, Contractor agrees that it shall not exclude any person from full employment rights nor prohibit participation in or the benefits of, any program, service or activity on the grounds of any protected status or class. Including but not limited to race, color, creed, religion, national origin, sex gender expression, gender identify, age, disability, marital status, sexual orientation, or public assistance status. No person who is protected by applicable law against discrimination shall be subjected to discrimination.
- b. County encourages Contractor to develop and implement a policy promoting diversity, equity, and inclusion in Contractor's workplace.

10.2. Statutory Requirements

If the contract is for materials, supplies or constructions, Contractor agrees to the following:

- a. In the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- b. No contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color.
- c. A violation of this section is a misdemeanor; and

- d. The contract may be terminated by County, and all money due, or to become due hereunder, may be forfeited for a second or any subsequent violation of the terms or conditions of the contract.

11. ADDITIONAL CONDITIONS

11.1. Representations and Warranties

- a. Contractor represents and warrants that it has the requisite training, skill, and experience necessary to provide the services and is appropriately accredited and licensed by all applicable agencies.
- b. Contractor represents and warrants that all Goods and/or services provided hereunder shall: (1) be fit for the purpose(s) for which they are intended; (2) be fit for merchantability; (3) be properly packaged, with proper technical specifications, instructions and warnings supplied; (4) comply with applicable health and safety standards; (5) conform to the descriptions, functionality, requirements, specifications, procedures and protocols set forth in the Contract Documents and (6) conform to ordinary standards of care. County's acceptance or inspection shall not alter or affect the obligations of Contractor or the rights of County.
- c. Contractor represents and warrants that any Software or media used to distribute it are and shall be free of: (1) code that may disrupt, damage, or interfere with County's use of its computers, systems and/or telecommunications (e.g. malicious code, viruses, etc.); (2) devices that are capable of automatically or remotely stopping the Software from operating (e.g. passwords, fuses, time bombs, etc.); (3) other harmful code; and (4) any 'back doors' or 'trap doors' which allow for bypassing any security features.
- d. Contractor represents and warrants that title to all Goods shall be free and clear of liens, claims, security interests or encumbrances, and that no Goods have an interest therein or an encumbrance thereon that is retained by the seller or any third-party.
- e. Contractor represents and warrants that it is the lawful owner of the Software or, to the extent it is not the lawful owner, that it has all rights necessary to license the Software to County. When legally required, Contractor shall obtain the written consent of both the owner and licensor to reproduce, publish, and/or use any such material supplied to County hereunder.
- f. Contractor represents and warrants that materials produced or used under the contract, including but not limited to Software, hardware, or any other item, shall not violate or in any way infringe any Intellectual Property Rights.
- g. If Goods not in current manufacture are specified by County, Contractor warrants that such Goods shall, in addition to the express warranties set forth herein, be given the warranty which accompanied the Goods when it was in current manufacture.

11.2. Independent Contractor

Contractor shall select the means, method, and manner of performing the services. Nothing is intended nor should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting Contractor as the agent, representative, or employee of County for any purpose. Contractor is and shall remain an independent contractor for all services performed hereunder. Contractor shall secure at its own expense all personnel required in performing services hereunder. Contractor's personnel and/or Subcontractors engaged to perform any work or services

hereunder will have no contractual relationship with County and will not be considered employees of County. County shall not be responsible for any claims related to or on behalf of any of Contractor's personnel, including without limitation, claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law (Minnesota Statutes Chapter 268) or the Minnesota Workers' Compensation Act (Minnesota Statutes Chapter 176) or claims of discrimination arising out of state, local or federal law, against Contractor, its officers, agents, contractors, or employees. Such personnel or other persons shall neither accrue nor be entitled to any compensation, rights, or benefits of any kind from County, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

11.3. Duty to Notify

Contractor shall promptly notify County of any claim, action, cause of action or litigation brought against Contractor, its employees, officers, agents or Subcontractors, which arises out of the provision of Goods and/or services described in the Contract Documents. Contractor shall also notify County whenever Contractor has a reasonable basis for believing that Contractor and/or its employees, officers, agents or Subcontractors, and/or County, might become the subject of a claim, action, cause of action, administrative action, criminal arrest, criminal charge or litigation arising out of and/or related to the Goods and/or services described in the Contract Documents.

11.4. Data, Systems and Intellectual Property

- a. Contractor, its officers, agents, owners, partners, employees, volunteers and Subcontractors shall, to the extent applicable, abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable law, rules, regulations and orders relating to data or the privacy, confidentiality or security of data. For clarification and not limitation, County hereby notifies Contractor that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to hereunder. Contractor shall promptly notify County if Contractor becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA or other data, data security, privacy or confidentiality laws, and shall also comply with the other requirements of this Section.
- b. Classification of data, including trade secret data, will be determined pursuant to applicable law and, accordingly, merely labeling data as "trade secret" by Contractor does not necessarily make the data protected as such under any applicable law.
- c. In addition to the foregoing MGDPA and other applicable law obligations, Contractor shall comply with the following duties and obligations regarding County Data and County Systems (as each term is defined herein). As used herein, "County Data" means any data or information, and any copies thereof, created by Contractor or acquired by Contractor from or through County pursuant to the contract, including but not limited to handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording any form of communication or representation, including electronic media, email, letters, works, pictures, drawings, sounds, videos, or symbols, or combinations thereof.
- d. If Contractor has access to or possession/control of County Data, Contractor shall safeguard and protect County Data in accordance with generally accepted industry standards, all laws, and all applicable County policies, rules and direction. To the extent of any inconsistency between

accepted industry standards and County policies, rules and directions, Contractor shall notify County of the inconsistency and follow County direction. Contractor shall immediately notify County of any known or suspected security breach or unauthorized access to County Data, then comply with all responsive directions provided by County. The foregoing shall not be construed as eliminating, limiting or otherwise modifying Contractor's indemnification obligations herein.

- e. County may, in its sole discretion, grant Contractor limited access to County computer/data systems including but not limited to County computers, networks, databases, applications and/or environments ("County Systems") exclusively for the purposes of performing services hereunder. County Systems may be owned by County or may be licensed by County from a third party. If County grants access to County Systems, Contractor and all Contractor personnel with access to County Systems: (1) shall secure and safeguard all access and authentication information related to County Systems, including but not limited to usernames, passwords, and other applicable authentication information related to County Systems access, ("Authentication Credentials"); (2) shall not share or distribute Authentication Credentials with any individual; and (3) shall comply with County data practices and security policies, rules and directions when accessing and using County Systems. Compliance with such requirements is supplemental to Contractor's duty to comply with applicable law and regulations and Contractor's ordinary duty of care in such situations.
- f. For clarification and not limitation of the foregoing, Contractor's access to County Systems shall be subject to the following: (1) Contractor shall notify all personnel with access to County Systems of the obligations imposed hereunder; (2) personnel performing on behalf of Contractor shall complete County approved data practices and security training as required by County; (3) if Contractor utilizes its own systems, software or equipment in the performance hereunder, the same shall meet County's technical operating and security system requirements, including but not limited to installing and/or maintaining County approved firewalls, proxies, filters and other monitors and controls; (4) Contractor shall immediately notify County of any known or suspected County System incidents or breaches, then comply with all responsive directions provided by County; and (5) if any Contractor personnel with access to County Systems no longer requires said access and/or is no longer performing services hereunder, Contractor shall immediately notify County and ensure that said individual no longer has access to County Systems, including but not limited to deleting, eliminating and destroying Authentication Credentials. County may terminate, deny or revoke access to County Systems at any time and without notice. Any notice required by the foregoing shall be provided to the Purchasing Director.
- g. Contractor confirms, transfers, assigns, and conveys to County all right, title, and interest in all intellectual property which Contractor may create, conceive, develop, or originate for County, either individually or jointly with others, and which arises out of the performance of this Agreement ("Work"), including but not limited to copyrights, patents, trade secrets, trademarks, service marks, and rights in data or other technology ("Intellectual Property Rights"). As applicable, Work shall be considered "works made for hire" as defined in the U.S. Copyright Act. To the extent any Work is not determined to be works made for hire, Contractor grants and assigns to County, without reservation, all right, title, and interest in and to said Work. As applicable and to the extent said grant and assignment does not convey all right, title, and interest to County, Contractor grants to County an unlimited, irrevocable, perpetual, royalty-free right and license to use, convey, and distribute the Work.

Contractor shall, upon request of County, execute all papers and perform all other acts necessary to assist County to establish, protect, and preserve County's Intellectual Property Rights.

For clarification, each party shall retain ownership of intellectual property developed prior to or outside of this Agreement ("Pre-existing IP"). However, and as applicable, Contractor grants County a perpetual, irrevocable, royalty-free license to use Pre-existing IP for County's business purposes.

h. Upon expiration or termination of the contract:

- 1) At the discretion of County and as specified in writing by the Purchasing Director, Contractor shall deliver to the Purchasing Director all County Data so specified by County.
- 2) County shall have full ownership and control of all such County Data. If County permits Contractor to retain copies of County Data, Contractor shall not, without the prior written consent of County or unless required by law, use any of County Data for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such County Data; and shall not do anything which in the opinion of County would affect County's ownership and/or control of such County Data.
- 3) Except to the extent required by law or as agreed to by County, Contractor shall not retain any County Data that are confidential, protected, privileged, not public, nonpublic, or private, as those classifications are determined pursuant to applicable law. In addition, Contractor shall, upon County's request, certify destruction of any County Data so specified by County.

11.5. Records – Availability/Access

Subject to the requirements of Minnesota Statutes section 16C.05, subd. 5, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Contractor and involve transactions relating to the contract. Contractor shall maintain these materials and allow access during the period of the contract and for six (6) years after its expiration or termination.

11.6. Successors, Subcontracting and Assignments

- a. Contractor binds itself, its partners, successors, assigns and legal representatives to County for all covenants, agreements and obligations contained in the Contract Documents.
- b. Contractor shall not assign, transfer or pledge the contract or provision of Goods and/or services hereunder, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of County. A consent to assign shall be subject to such conditions and provisions as County may deem necessary, accomplished by execution of a form prepared by County and signed by Contractor, the assignee and County. Permission to assign, however, shall under no circumstances relieve Contractor of its liabilities and obligations hereunder.
- c. Contractor shall not subcontract the contract and/or provision of Goods or services, whether in whole or in part, without the prior written consent of County. Consent to subcontract shall under no circumstances relieve Contractor of its liabilities and obligations hereunder. Further, Contractor shall be fully responsible for the acts, omissions, and failure of its Subcontractors in the provision

of Goods and/or services hereunder, and of person(s) directly or indirectly employed by Subcontractors. Contracts between Contractor and each Subcontractor shall require that the Subcontractor's provision of Goods and/or services be performed in accordance with the Contract Documents. County will assume no contractual relationship with Subcontractors. Contractor shall make contracts between Contractor and Subcontractors available upon request. For clarification and not limitation of the provisions herein, none of the following constitutes assent by County to a contract between Contractor and a Subcontractor, or a waiver or release by County of Contractor's full compliance with the requirements of this Section: (1) County's request or lack of request for contracts between Contractor and Subcontractors; (2) County's review, extent of review or lack of review of any such contracts; or (3) County's statements or actions or omissions regarding such contracts.

- d. As required by Minnesota Statutes section 471.425, subd. 4a, Contractor shall pay any subcontractor within ten (10) days of Contractor's receipt of payment from County for undisputed services provided by the subcontractor, and Contractor shall comply with all other provisions of that statute.
- e. Contractor shall notify County in writing if another person/entity acquires, directly or indirectly, more than fifty percent (50%) of the voting power of the shares entitled to vote for directors of Contractor. Notice shall be given within ten (10) days of such acquisition and shall specify the name and business address of the acquiring person/entity. County reserves the right to require the acquiring person/entity to promptly become a signatory to this Agreement by amendment or other document so as to help assure the full performance of this Agreement.

11.7. Contract Documents

- a. The Contract Documents form the contract. The Contract Documents represent the entire agreement between the parties and supersede all oral and written negotiations and agreements relating to the subject matter. If additional contract terms are required, it will be on a form required and prepared by County. Such written contract shall be signed by Contractor and returned, together with any information required by County, within the time specified by County in the Notice of Award.
- b. Any alterations, variations or modifications of the provisions of the contract shall only be valid when they have been reduced to writing as an amendment to the contract signed by Contractor and the Purchasing Director or other duly authorized County official.
- c. If there is any conflict between the terms of the Contract Documents and referenced or attached items, the terms of the Contract Documents shall prevail.
- d. Except as expressly provided, the substantive legal terms contained in the Contract Documents, including but not limited to Indemnification/Claims, Contractor's Insurance, Contract Documents, Default and Termination, or Minnesota Laws Govern may not be altered, varied, modified or waived by any change order, implementation plan, scope of work, development specification or other development process or document.
- e. If any provision of the contract is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

11.8. Survival of Provisions

Provisions that by their nature are intended to survive the term or termination of the contract do survive such term or termination.

11.9. Compliance and Non-Debarment Certification

- a. Contractor shall comply with all applicable law, conditions of any funding sources, regulations, rules and ordinances currently in force or later enacted.
- b. Contractor certifies that it is not prohibited from doing business with either the federal government or the State of Minnesota as a result of debarment or suspension proceedings. Contractor shall immediately notify County if Contractor is debarred or suspended during the term of this contract.
- c. If the source or partial source of funds for payment of Goods and/or services provided hereunder is federal, state or other grant monies, County and Contractor are bound by and shall comply with applicable law, rules, regulations, applicable documentation, or other County directives relating to the source and utilization of such funds which may include reallocation of the funds at County's sole discretion, and, as applicable, the Federal Award Contract Provisions Addendum.

11.10. Recycling

In addition to other legal obligations, County encourages Contractor to have a single-sort recycling program or provide recycling service for at least three types of materials, which may include food waste. County also encourages Contractor to educate employees about the recycling program.

11.11. Notices

Any notice or demand which must be given or made by a party hereunder or any statute or ordinance shall be in writing and shall be sent via registered or certified mail. Notice to County shall be sent to the Purchasing Director. Notice to Contractor shall be sent to the registered address in the Supplier Portal or to the address stated in Contractor's Substitute form W-9 provided to County.

11.12. Conflict of Interest

Contractor affirms that to the best of Contractor's knowledge, Contractor's involvement hereunder does not result in a conflict of interest or potential conflict of interest with any party or entity which may be affected by the terms of this contract. Should any conflict or potential conflict of interest become known to Contractor, Contractor shall immediately notify County of the conflict or potential conflict, specifying the part of this contract giving rise to the conflict or potential conflict, and advise County whether Contractor will or will not resign from the other engagement or representation. A conflict or potential conflict may, in County's discretion, be cause for termination of the contract

11.13. Media Outreach

Contractor shall notify County, prior to publication, release or occurrence of any Outreach (as defined below). The parties shall coordinate to produce collaborative and mutually acceptable Outreach. For clarification and not limitation, all Outreach shall be approved by County, by and through its Public Relations Officer or their designee(s), prior to publication or release. As used herein, the term "Outreach" shall mean all media, social media, news releases, external facing communications, advertising, marketing,

promotions, client lists, civic/community events or opportunities and/or other forms of outreach created by, or on behalf of, Contractor (1) that reference or otherwise use the term "Hennepin County," or any derivative thereof in relation to this contract or the Goods and/or services purchased hereunder; or (2) that directly or indirectly relate to, reference, or concern the County of Hennepin, the contract, the provision of Goods and/or services hereunder, or County personnel, including but not limited to County employees and elected officials.

11.14. Minnesota Laws Govern

The laws of the state of Minnesota shall govern all questions and interpretations concerning the validity and construction of the contract and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, state of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the state of Minnesota.

11.15. Cooperative Purchasing

County is a signature party to the Hennepin County Cooperative Purchasing Agreement and the Joint Powers Purchasing Agreement. These agreements allow other signatory organizations ("Cooperative Members") to purchase the same or substantially similar Goods and services based upon terms that are the same or substantially similar to those set forth in Contractor's contract with County, including but not limited to price/cost, if agreed upon pursuant to a separate agreement between Contractor and Cooperative Member. County shall have no obligation, liability or responsibility for any purchase made between a Cooperative Member and Contractor. Contractor may contact the County Purchasing Office for a list of current Cooperative Members.

11.16. Emergencies and Disasters

- a. In the event of an emergency or disaster, Contractor may be required to either increase or decrease quantities of Goods and/or the provision of services normally provided to County. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply:
 - 1) County shall notify Contractor that County is experiencing an emergency or disaster, and may request emergency and priority Goods and/or services from Contractor or a decrease in quantities of Goods and/or services.
 - 2) Upon such notice by County, Contractor shall make reasonable efforts to increase or decrease the Goods and/or services in the quantities requested and within the schedule specified by County.
 - 3) County shall be the customer of first priority for Contractor, except where preceded by State or Federal government mandates. Contractor shall make its best and priority efforts to provide the requested Goods and/or services in as complete and timely manner as possible.
 - 4) If Contractor is unable to meet County's request, Contractor shall promptly assist County to the extent practicable, to gain access to alternate Goods and/or services. This may include: (1) coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests; (2) offering County substitutions provided Contractor obtains prior approval from County for such substitutions.

- b. For Goods and/or services provided in an emergency or disaster, Contractor shall charge County the contract price. If no price has been determined, it shall charge County a price that is normally charged for such Goods and/or services (such as list prices for items in stock). However, in the event that Contractor: (1) incurs unavoidable additional costs to fulfill the County's request; and (2) Contractor would need to increase prices in order to obtain a fair rate of return; and (3) the contract price is not based on a cost-profit, mark-up, or discount off formula; then Contractor shall charge County a reasonable mark-up over Contractor's actual costs.