

GENERAL SERVICES ADMINISTRATION CONTRACT

BETWEEN

STATE OF MINNESOTA AND IBM

This General Services Administration Contract (this "Contract") is entered into with an "Effective Date" as defined at Article 2, Paragraph 1 herein by and between the State of Minnesota Department of Administration (the "State" or "Department of Administration") on behalf of itself and various Agencies of the State and CPV members (as defined in Article 1 below) and International Business Machines Corporation (the "Contract Vendor" or "IBM"), (individually known as the "party" and collectively known as the "Parties"), doing business at 650 3rd Avenue South, Minneapolis, Minnesota 55402 for the purpose of providing Hardware, Software, Subscription and Support, and Services (as those terms are defined in Article 1 below) at the prices referenced in a Federal schedule of prices and further identified in this Contract.

BACKGROUND

The Contract Vendor has entered into a contract with the Federal Government administered by the United States General Services Administration ("GSA"), the Federal Government's central management agency for administrative services, under the GSA Schedules (also referred to as Multiple Award Schedules and Federal Supply Schedules ("FSS")) Program. Pursuant to the GSA Schedules Program, the GSA establishes long-term government-wide contracts that allow customers to acquire a vast array of supplies (products) and services directly from commercial suppliers, such as IBM. The GSA awards contracts to responsible companies offering commercial items, at fair and reasonable prices, that fall within the generic descriptions in the GSA Schedule Solicitations. Such a Federal schedule contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the term of the contract between the GSA and IBM, which is schedule to expire on September 30, 2012, Number GS-35F-4984H.

The State has determined that the Contract Vendor's GSA Schedule contract offers goods and services at prices that may be advantageous to the State, various Agencies of the State and

CPV members (as defined in Article 1 below) and has therefore decided to employ the Contract Vendor's FSS pricing as the basis for certain state contracts with the Contract Vendor. This Contract establishes terms and conditions under which the State, Agencies of the State and CPV members may acquire the Contract Vendor's goods or services via a transaction document (e.g., a "Purchase Order" in the case of "Hardware," "Software," and "Subscription and Support" and a "Work Order" in the case of "Services," as each of those terms is defined in Article 1 below) employing the Contract Vendor's FSS pricing, but it in no manner obligates the State or any Agencies of the State or CPV member to do so.

RECITALS

WHEREAS, the State has the need to purchase and the Contract Vendor the desire to sell Hardware, Software, Subscription and Support and Services; and,

WHEREAS, Minn. Stat. Section 16C.10 Subd. 3, allows the State to, instead of soliciting bids, create a contract with suppliers who have published schedules of prices effective for sales to any Federal Agency of the United States; and,

WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota who have signed a Cooperative Purchasing Agreement (as that term is defined in Article 1 below) with the State of Minnesota.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

ARTICLE 1: GENERAL ADMINISTRATIVE PROVISIONS

A. Definitions.

1. "Agency(ies) of the State" is as defined in Minn. Stat. §§ 15.01 and 15.012, or as may otherwise be created, designated or defined as such by Minnesota Law.
2. A "CPV member" is any governmental unit that is a member of the Cooperative Purchasing Venture (CPV) Program.
3. The "CPV Program" is the Cooperative Purchasing Venture Program as established by Minn. Stat. Section 16C.03, Subd. 10, which authorizes the Commissioner of Administration to enter into a Cooperative Purchasing Agreement for the provision of goods, services, and utilities with governmental units, as described and defined in Minn. Stat. Section 471.59, Subd. 1. Based on this authority, the Commissioner of Administration, through the Materials

Management Division (the "MMD"), enters into a Joint Powers Agreement that designates the MMD as the authorized purchasing agent for the governmental unit.

4. A "Customer" is the State, any Agency of the State, or CPV member.
5. "Exhibits" are documents attached to, incorporated by reference in, or added to this Contract now or at a later date that describe products, support, or other business terms.
6. "Hardware" is the physical aspect of computers and computer systems, and may include such things as computer equipment, servers, routers, storage devices, machines, cables, connectors, power supply units, and peripheral devices such as the input devices, audio speakers, and printers, and associated manuals and documentation.
7. "Licensed Internal Code" (called "LIC") is Machine Code used by certain Machines Contract Vendor specifies.
8. "Machine" is a hardware device, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that Contract Vendor may provide to the State.
9. "Materials" are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings, and similar works) that Contract Vendor may deliver to the State as part of a Service. The term "Materials" does not include programs, Machine Code, or Licensed Internal Code.
10. "Price List" is the Contract Vendor's FSS listing of prices for available Products, Subscription and Support, and prices as attached hereto as Exhibit A and as provided on the Contract Vendor's web site at www.ibm.com/easyaccess/gsa.
11. "Product(s)" include(s) Hardware, Software, options, documentation, accessories, supplies, spare parts and upgrades on the Contract Vendor's FSS Price List on the date the Contract Vendor receives the State's order.
12. A "Purchase Order" is a mutually agreed upon document signed by the Parties and used to confirm a Hardware or Software transaction.
13. "Service(s)" means, unless otherwise indicated, both professional or technical services and service performed under a service contract, as defined at Minn. Stat. Section 16C.02, Subd.17.

14. "Seven-County Metropolitan Area/Metropolitan Area" refers to Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties in Minnesota.
15. "Software" is one or more programs capable of operating on a computer, processor, or controller that are either listed separately as Software products on the FSS Price List, included with another product on the FSS Price List, or fixed in hardware and not removable in normal operation.
16. "Subscription and Support" are those Services defined in a Work Order which may include routine or preventative maintenance, or other types of maintenance or support such as the restoration to full operating service, by repair or replacement, of malfunctioning equipment reported to the Contract Vendor under the provisions stated herein for equipment.
17. "Support" includes maintenance and repair of Hardware, updates and upgrades to Software, and maintenance and support services such as consulting, training, and other support services provided by the Contract Vendor as agreed upon in the applicable Purchase Order or Work Order. Services must be related to the purchase of equipment or software and are limited to \$25,000 per project, unless specifically approved by MMD and agreed upon by the Parties. Work Orders (as defined below in this Article 1, Section A.17) must be issued by the State, Agencies of the State, or CPV members in order to procure Services.
18. A "Work Order" is a mutually agreed upon document signed by the Parties to confirm a Services transaction.

B. Agreement Composition.

The entire agreement consists of (a) this Contract, (b) the Contract Vendor's IBM GSA Product and Price Schedule Number GS-35F-4984H, (c) the Contract Vendor's Service Agreement and/or (d) Software Licensing Agreement, (each of which shall be defined as a "Contract Document") if any, and any written offers, agreements or representations incorporated as part of the negotiation process, attached hereto as Exhibits. In the event of any inconsistency or conflict of language among any Contract Documents, the terms and provisions set forth and/or referenced in this Contract shall prevail over inconsistent or conflicting terms and provisions contained in the other listed Contract Documents, in their original form or as amended. The terms and provisions of each Contract Document listed above will take precedence over each subsequent Contract Document. The State of Minnesota reserves the right to clarify any contractual relationship in writing, with the concurrence of the Contract Vendor, and such clarifications shall govern in case of inconsistency or conflict between the Contract Documents. With respect to

engagements arising under this Contract that also involves any of the Contract Documents, the order of precedence among Contract Documents shall be as follows:

1. This Contract as signed by Parties, including all Exhibits attached thereto.
2. Contractor's Service Agreement, if any.
3. Software Licensing Agreement, if any.

C. Term and Termination.

The Term of this Contract shall be effective upon the Effective Date which for purposes of this Contract shall be defined as the date of final execution by the State (following the date of execution by Contract Vendor), and, unless otherwise terminated or extended, shall remain in effect until a date two (2) years following the anniversary of the Effective Date, with the option to renew for up to three (3) consecutive terms of twelve (12) months each (the "Renewal Terms"), with each such Renewal Term becoming effective immediately following the expiration of the preceding term, upon written agreement of both Parties.

1. Either party may terminate this Contract or the applicable Work Order or Purchase Order for cause, if the other Party materially breaches any of the terms and fails to correct such breach, upon thirty (30) days' written notice, pursuant to Minn. Stat. Section 16B.08, Subd. 5(a). License termination and termination of a Purchase Order involving Subscription and Support are described in the license agreement or the Purchase Order, respectively.
2. Either Party may terminate this Contract or the applicable Work Order or Purchase Order for convenience. In the event of a termination for convenience, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for Products accepted or for Services satisfactorily performed and accepted in accordance with the acceptance process and acceptance criteria agreed upon in the applicable Purchase Order or Work Order, as applicable.

D. Price.

All Products and Services shall be sold at their current FSS price, except in situations where the Parties have agreed in the applicable Purchase Order or Work Order on different prices.

E. Transportation.

All Products shall be delivered to the receiving point specified in a Purchase Order. Prices are FOB Destination, prepaid and allowed (with freight included in the price), to the receiving location specified in the Purchase Order (e.g., receiving dock, work location, or warehouse) and signed for by the receiving authority. Delivery dates are estimates unless otherwise specifically agreed upon in a Purchase Order. Transportation charges, if applicable, will be specified in a Purchase Order. For Programs that the Contract Vendor provides to the State in tangible form, the Contract Vendor fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by the Parties.

F. Order Process.

Purchase Orders will be issued against this Contract for Hardware, Software, Subscription and Support, and Work Orders will be issued against this Contract for Services, respectively, during the term of this Contract. Where applicable, the Contract Vendor will accept a purchasing card for Product order placement in addition to accepting a Purchase Order or Work Order, whichever is applicable, without passing the processing fees associated with the bank issued purchasing card back to the State. The contract number and the Purchase Order or Work Order number must appear on all documents (e.g., invoices, packing slips, etc.).

G. Waivers.

1. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the Parties. Forbearance or indulgence in connection with this Contract in any form or manner by either Party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other Party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other Party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence, except to the extent that either Party's remedies are exclusive or otherwise expressly limited, under this Contract.
2. Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract

shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the Parties hereto.

3. Neither Party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

H. Severability.

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

I. Contract Amendments.

1. At any time, the Parties may make changes to the terms and conditions of this Contract by issuing a written Contract amendment duly executed by an authorized representative of the State and the Contract Vendor.
2. Contract amendments shall be negotiated by the State with the Contract Vendor whenever necessary to address changes in the terms and conditions. An approved amendment means one approved by the authorized signatories of the Contract Vendor and the State as required by law.

J. Change Requests - Updating the Contract.

Either Party may request a change to the quantity, costs, timetable, scope of work, time frames, or other provisions described in a Work Order or Purchase Order (each a "Change Request"). Upon receipt of a Change Request, the other Party shall within the timeframe agreed upon by the Parties (or if none is agreed upon, then within twenty (20) days) review the Change Request and identify the impact of the requested Change on the Work Order or Purchase Order. The Parties will review the Change Request and in good faith seek to agree or negotiate an acceptable compromise to the Change Request. Once the Parties agree upon the Change Request, they will execute a Change Order, approved by the authorized signatories of the Contract Vendor and the State as required by law.

K. Governing Law.

This Contract shall be construed in accordance with, and its performance governed by, the laws of the State of Minnesota. Except to the extent that the provisions of this

Contract are clearly inconsistent therewith, the sale of Hardware under this Contract shall be governed by the Uniform Commercial Code (the "UCC") as adopted by the State.

L. Jurisdiction and Venue.

Venue for all legal proceedings arising out of this Contract, or breach thereof, shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota.

M. Laws and Regulations.

Any and all Services and Products offered and furnished shall comply fully with all State and federal laws and regulations applicable to Contract Vendor as an IT service provider, including Minn. Stat. Section 181.59 Discrimination on Account of Race, Creed or Color Prohibited in Contract and Minn. Stat. Sections 363A.03 Unfair Discriminatory Practices: Employment, 363A.02 Exemptions: Employment and 363A.01 Definitions: Employment prohibiting discrimination.

N. Assignments.

The Contract Vendor shall not sell, transfer, assign, or otherwise dispose of this Contract or any portion hereof without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contract Vendor shall give written notice to the State's authorized agent of such a possibility at least thirty (30) days prior to the sale, transfer, assignment, or other disposition of this Contract. Failure to do so may result in the Contract Vendor being held in default. This consent requirement includes assignment or transfer of this Contract. This Section shall not be construed as prohibiting the Contract Vendor's right to assign this Contract to corporations to provide some of the Services hereunder or to affiliates or subsidiaries of Contract Vendor. Notwithstanding the foregoing acknowledgment, the Contract Vendor shall remain solely liable for all performance required and provided of and by it under the terms and conditions of this Contract.

O. Titles.

Titles of paragraphs used herein are only for the purpose of facilitating reference and shall not be construed to imply a contractual construction of language.

P. Sovereign Immunity.

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

Q. State Agency Contract Use.

The State intends to use this Contract to meet any part of its needs for goods and services purchased under the authority of the Commissioner of Administration. An exception will be made when the Commissioner of Administration or authorized delegate determines in writing that the State will achieve its "best value" by utilizing alternative procurement methods as specified in Minn. Stat. Ch. 16C or other authorizing law.

R. Award of Related Contracts.

In the event the State undertakes or awards supplemental or successor contracts for work related to this Contract or any portion thereof, the Contract Vendor shall provide a commercially reasonable level of cooperation with all such contract vendors and the State in all such cases. All contracts between subcontractors and the Contract Vendor shall include a provision requiring compliance with this Section, subject to the execution of a confidentiality agreement with any such third party.

S. Administrative Fee.

Pursuant to MMD policy and practice, on a quarterly basis, the Contract Vendor shall return to the MMD, a fee of .96% (.0096) of the total sales during that quarter, to assist with the cost of administering this Contract. The administration fee shall be remitted to the State within thirty (30) days of the end of the quarter. The quarter periods are January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31 of any given year. The Contract Vendor must provide a report detailing the total sales to the State, Agencies of the State and CPV members. The report must be submitted with the check on or before the required thirty (30) days after the end of the quarter.

T. Electronic Commerce.

The Contract Vendor and its subcontractors are to keep in mind the State's vision of using electronic commerce (e-commerce) as one of its primary methods of ordering and procuring Products and Services to achieve cost effectiveness, e.g., transmitting documents to reduce the amount of delivery time and the average payment cycle.

Should the volume of orders between the State and the Contract Vendor and/or its subcontractors merit such an ordering arrangement, the Contract Vendor and its subcontractors may be required and shall use commercially reasonable efforts to enhance their technology to make the same compatible with that of the State in order to support this effort. This effort should include electronic bidding. Any such enhancements will be described in a Change Order or Amendment.

U. Administrative Personnel Changes.

1. The Contract Vendor must notify the State of changes in the Contract Vendor's Key Administrative Personnel, in advance and in writing, to the extent practicable. For purposes of this Contract, "Key Administrative Personnel" are those IBM personnel who are responsible for managing a project in which IBM performs Services for the State.
2. If any employee of the Contract Vendor who, in the sole discretion of the State, is deemed unacceptable by the State, the State shall notify the Contract Vendor and the Contract Vendor shall have a reasonable opportunity to address the circumstances that lead to the State's notification. If after a reasonable period, the Contract Vendor is unable to resolve such circumstances, then the personnel shall be removed from the project.
3. If any employee of the Contract Vendor violates any law or any of the State's policies that would result in significant disciplinary action for State employees, engaging in similar conduct, or conduct that could result in suspension or debarment under State law of a contract vendor, the State shall notify the Contract Vendor shall thereafter promptly remove the personnel from a project.
4. In the event that an employee is removed pursuant to a written request from the State, the Contract Vendor shall have ten (10) working days in which to fill the vacancy with an employee with skills and background comparable to those identified in an agreed upon Work Order.

V. Contract Vendor Key Personnel and Project Management.

If the need arises to add to or remove any of the Contract Vendor's key personnel, whether permanently or temporarily, the Contract Vendor must provide written notification at least ten (10) business days in advance, to the extent practicable, to the State. This notice is only required if the change is for more than ten (10) consecutive business days. If the Contract Vendor is adding personnel, the written notification should include the

proposed individual's name and his or her resume. If the State does not approve the proposed change(s), the State will respond in writing within ten (10) business days.

W. Organizational Conflicts of Interest.

The Contract Vendor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons: a Contract Vendor is unable or potentially unable to render impartial assistance or advice to the State; the Contract Vendor's objectivity in performing the work is or might be otherwise impaired; or the Contract Vendor has an unfair competitive advantage. Pursuant to Minn. Stat. § 16C.04 and Minn. Rule 1230.0750, the Contract Vendor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the MMD that shall include a description of the action the Contract Vendor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, terminate for its convenience this Contract or the applicable Purchase Order or Work Order. In the event the Contract Vendor was aware of an organizational conflict of interest prior to the award of this Contract and did not disclose the conflict to the State, the State may terminate this Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contract Vendor," and "State" modified appropriately to preserve the State's rights.

ARTICLE 2: STATE REQUIREMENTS

A. Effective Date.

Pursuant to Minn. Stat. § 16C.05, Subd. 2, this Contract shall be effective upon the date of final execution by the State unless a later date is specified in the Contract.

B. Risk of Loss or Damage.

When the Contract Vendor accepts the State's order, the Contract Vendor agrees to sell the State the Machine described in a Purchase Order or Work Order. The Contract Vendor transfers title to the State or, if applicable, the State's lessor when the Machine is

shipped to the State or its designated location. However, the Contract Vendor reserves a purchase money security interest in the Machine until the Contract Vendor receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become the Contract Vendor's property, the Contract Vendor reserves a security interest until the Contract Vendor receives payment of all the amounts due and the removed parts. The State authorizes the Contract Vendor to file appropriate documents to permit the Contract Vendor to perfect its security interest.

Unless otherwise provided by the terms of an applicable Purchase Order, for each Machine, the Contract Vendor bears the risk of loss or damage up to the time it is delivered to the State or the State's designated location, and its receipt is acknowledged by the signature of an authorized State officer or employee. Thereafter, the State assumes the risk of loss. For any loss or damage for which the Contract Vendor is responsible under this Section 2.B., the State must i) report the loss or damage in writing to the Contract Vendor within ten (10) business days of delivery and ii) follow the applicable claim procedure. Assumption of risk of loss or damage by the State does not constitute or imply acceptance of a Machine if the parties have agreed upon acceptance criteria, tests, processes, or procedures in the applicable Purchase Order or Work Order.

C. Invoices.

The Contract Vendor shall render invoices as set forth in the applicable Purchase Order or Work Order, or if not specified, then, upon its receipt of the State's written acceptance of a deliverable or upon delivery of a Product. Invoices shall match the line items on the Purchase Order or Work Order. In order to allow the State to comply with applicable State law regarding the time frame for payment, and State law requiring acceptance, the Contract Vendor shall not render an invoice until: (1) in the case of Hardware, upon receipt and acceptance; (2) for Software, upon installation and acceptance; (3) for Services, upon completion and acceptance of services or agreed upon portion of work. For purposes of this Paragraph C., the term "acceptance" means signed acknowledgement of receipt and, to the extent provided in any applicable Purchase Order or Work Order, or acceptance test as provided for in Section 2.BB., below, Contract Vendor's satisfactory completion of any acceptance criteria, testing, process or procedure, as indicated by the signature of an authorized State officer or employee.

D. Payment.

Minn. Stat. Section 16A.124 Subd. 3 requires the State to pay each valid Contract Vendor obligation so that the Contract Vendor receives payment within thirty (30) days following the receipt of the invoice for the completed delivery of the Product or Service. Minn. Stat. Section 16A.124 Subd. 5 requires payment of interest for undisputed billings when the State has not paid the billing within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later.

E. Taxes.

The State is subject to paying Minnesota sales and use taxes. Taxes will be paid to the Department of Revenue using Direct Pay Permit #1114. Each Party shall be responsible for a) any real or personal property taxes, assessments or levies on property it owns or leases, b) any franchise, license, business, occupation and similar taxes on its business and c) any taxes based on its net income or gross receipts. The Contract Vendor shall be responsible for any sales, use, excise, value-added and other similar taxes and duties payable by the Contract Vendor on any goods or services used or consumed by it in providing the Services where the tax is imposed on its acquisition or use of such goods or services and the amount of tax is measured by its cost in acquiring such goods or services. The State shall be responsible and liable to the Contract Vendor for the amount of any sales, use, excise value-added or other similar taxes and duties that are imposed on the charges made by the Contract Vendor under this Contract. The Contract Vendor and the State shall cooperate reasonably to determine and to minimize as legally permissible, the State's tax liability on the Contract Vendor's charges including the applicability of any exemption certificates provided in a timely manner by the State. The Contract Vendor's invoices shall separately state the amounts of any taxes, by taxing jurisdiction, that the Contract Vendor is properly collecting from the State pursuant to the terms hereof. Each Party will make available to the other Party any resale certificates, information regarding out-of-state or out-of-country sales or use of equipment, materials, or services and other exemption certificates or information reasonably requested by the other Party.

F. Retainage.

Pursuant to Minn. Stat. Section 16C.08, Subd. 5, ten percent (10 %) of IBM's fees associated with each deliverable constituting "professional or technical services" as defined in Section 16C.08, Subd. 1 and provided as part of IBM's Services under a Work Order will be withheld by the applicable Customer, where the Customer is the State or

one of its agencies or departments. The retainage will be held by the Customer until the deliverable has been reviewed and accepted by the authorized representative of the Customer, in accordance with any specifications, acceptance criteria, or acceptance procedures set forth in the applicable Work Order.

G. Subcontractor Relationship. Not Applicable.

H. Payments to Subcontractors.

In the event the Contract Vendor hires subcontractors to perform all or some of the duties of this Contract, the Contract Vendor understands that Minn. Stat. Section 16A.1245 requires that any such subcontractor be paid within ten (10) business days of the Contract Vendor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contract Vendor agrees to take all commercially reasonable steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contract Vendor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contract Vendor for work performed under this Contract and deduct said payment from any remaining amounts due the Contract Vendor. Before any such payment is made to a subcontractor, the State shall provide the Contract Vendor written notice that payment will be made directly to a subcontractor. The Contract Vendor shall ensure that the subcontractor transfers those intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property rights ownership Section of this Contract. In the event the Contract Vendor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contract Vendor.

I. Indemnification, Hold Harmless, and Limitation Of Liability.

Circumstances may arise where, because of Contract Vendor's negligent act, omission, default or other liability, the State is entitled to recover damages from Contract Vendor. In each such instance, regardless of the basis on which the State is entitled to claim damages from Contract Vendor (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Contract Vendor is liable only for:

1. payments referred to in our patents and copyrights terms described herein;
2. damages for bodily injury (including death) and damage to real property and tangible personal property; and
3. the amount of any other actual direct damages or loss, up to the lesser of \$7,500,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim.

This limit also applies to any of Contract Vendor's subcontractors. It is the maximum for which Contract Vendor and its subcontractors are collectively responsible.

Items for Which Contract Vendor Is Not Liable

Under no circumstances is Contract Vendor or its subcontractors liable for any of the following:

1. third-party claims against the State for losses or damages (other than those under the first two items listed above);
2. loss of, or damage to, the State's records or data; or
3. special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if Contract Vendor is informed of their possibility.

The State's liability is governed by the Minnesota Tort Claims Act, Minn. Stat. Section 3.736 and other applicable laws.

J. Intellectual Property Indemnification.

If a third party claims that a Product Contract Vendor provides to the State infringes that party's patent or copyright, Contract Vendor will defend the State against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by Contract Vendor, provided that the State:

1. promptly notify Contract Vendor in writing of the claim; and
2. allow Contract Vendor to control the settlement of any monetary issues relating to an infringement action and the State will cooperate with IBM (at IBM's expense) in any related settlement negotiations. IBM agrees that the Office of the Minnesota Attorney General shall retain control over any issues regarding sovereign immunity, state liability and money damages to be paid by the State and any other issues not relating to indemnification by IBM.

Remedies

If such a claim is made or appears likely to be made, the State agrees to permit Contract Vendor to enable the State to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If Contract Vendor determines that none of these alternatives is reasonably available, the State agrees to return the Product to Contract Vendor on its written request. Contract Vendor will then give the State a credit equal to:

1. for a Product, its net book value provided the State has followed generally-accepted accounting principles;
2. for a Contract Vendor Program, the amount paid by the State or 12 months' charges (whichever is less); and
3. for Materials, the amount the State paid Contract Vendor for the creation of the Materials.

This Article 2, Paragraph J. is Contract Vendor's entire obligation to the State regarding any claim of infringement. Contract Vendor's provision of a credit as provided in Remedies 1, 2, or 3 above, is in addition to and not in lieu of its obligation to defend the State and pay costs, damages and attorney's fees as provided herein.

Claims for Which Contract Vendor is Not Responsible.

Contract Vendor has no obligation regarding any claim based on any of the following:

1. anything the State provides which is incorporated into a Product or Contract Vendor's compliance with any designs, specifications, or instructions provided by the State or by a third party on the State's behalf;
2. the State's modification of a Product, or a Contract Vendor Program's use in other than its Specified Operating Environment;
3. the combination, operation, or use of a Product with other products not provided by Contract Vendor as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that Contract Vendor did not provide, or the distribution, operation or use of a Product for the benefit of a third party outside the State's Enterprise; or
4. infringement by a non-Contract Vendor Product.

K. Ownership.

1. Contract Vendor will specify Materials to be delivered to the State. Contract Vendor will identify them as being "Type I Materials," "Type II Materials," or otherwise as both Parties agree. If not specified, Materials will be considered Type I Materials.

Type I Materials. Type I Materials are those, originally created by Contract Vendor for the State during the Service performance period, in which the State will have all right, title, and interest (including ownership of copyright). Contract Vendor will retain one copy of the Materials. The State grants Contract Vendor: (1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, Type I Materials and (2) the right to authorize others to do any of the former.

Type II Materials. Type II Materials are those, created during the Service performance period or otherwise (such as those that pre-exist the Service), in which Contract Vendor or third parties have all right, title, and interest (including ownership of copyright). Contract Vendor will deliver one copy of the specified Materials to the State. Contract Vendor grants the State an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the State's Enterprise only, copies of Type II Materials.

2. Each Party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this Section.
3. Notwithstanding any provision of this Contract to the contrary, any preexisting work, or materials developed independently of the Contract Vendor's Services under a Work Order or Service Order (including routines, libraries, tools, methodologies, architecture, design guides, templates, processes, technologies, development tools, and other similar items created, adapted or used by the Contract Vendor in its business generally, including enhancements, improvements or derivative works thereof, and any all intellectual property rights associated with such Pre-Existing Materials (collectively referred to as "Pre-Existing Materials"), shall be and remain the sole property of the Contract Vendor, and the State shall have no interest in or claim to such Pre-Existing Materials. To the extent any preexisting works or materials are used as a design guide or template in creating, or are otherwise embedded in, any Materials, the Contract Vendor hereby grants to the State an irrevocable, nonexclusive, worldwide, paid-

up license to use, execute, reproduce, and distribute within the State, to the extent necessary to obtain the benefit of the Materials. Furthermore, the State shall not distribute such Pre-Existing Materials to any third parties without the prior written consent of the Contract Vendor.

4. The Contract Vendor and its subcontractors shall be free to use and employ their general skills, knowledge and expertise, and to use, disclose, and employ any generalized ideas, concepts, knowledge, methods, techniques or skills gained or learned during the course of performing the Services under a Work Order or Services Order, so long as the Contract Vendor or its subcontractors acquire and apply such information without disclosure of any confidential or proprietary information of the State, and without any unauthorized use or disclosure of any Materials resulting from a Work Order or Services Order.

L. Copyright. Not Applicable.

M. Title.

The Contract Vendor must pass unencumbered title to any Type I Materials and Machines purchased under this Contract upon receipt of payment by the State. This obligation on the part of the Contract Vendor to transfer ownership rights does not apply to Pre-Existing Materials or other Contract Vendor proprietary materials owned or licensed by the Contract Vendor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Except for the allocation of rights described in Section K. above, Ownership rights to such materials shall not be affected in any manner by this Contract.

N. Prohibition Against Gratuities.

In accordance with Minn. Stat. §§ 15.43 Acceptance of Advantage by State Employee; Penalty, 16C.04 Ethical Practice and Conflict of Interest, 43A.38 Code of Ethics for Employees in the Executive Branch, and 609.42 Bribery, the Parties agree that:

1. The State may, by written notice to the Contract Vendor, terminate the right of the Contract Vendor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contract Vendor or any employee, agent, or representative of the Contract Vendor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or

amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.

2. The Contract Vendor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contract Vendor, its agent, or its employees.

O. Insurance.

Workers' Compensation Insurance. The Contract Vendor shall provide workers' compensation insurance for all its employees, and, in case any work is sublet, the Contract Vendor shall require the subcontractor to provide workers' compensation insurance in accordance with statutory requirements in Minn. Stat. § 176.181 or other applicable law. Evidence of the subcontractor's insurance shall be filed with the Contract Vendor.

P. State Audits (Minn. Stat. Section 16C.05, Subd. 5).

The Contract Vendor is subject to audit by the State in accordance with Minn. Stat. Section 16C.05, Subd. 5.

Q. Government Data Practices Act.

The Contract Vendor and the State must comply with Minn. Stat. Ch. 13 and the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contract Vendor and all data provided to the State by the Contract Vendor.

R. Antitrust.

The Contract Vendor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations.

S. Human Rights Certification.

The Contract Vendor certifies that it will remain in compliance with Minn. Stat. Section 363.073 during the life of this Contract.

T. Nondisclosure of Confidential Information.

The Parties acknowledge that the Agreement for the Exchange of Confidential Information, Agreement Number, dated March 24, 2009, Number 004249918, shall govern the terms and conditions of this Contract.

U. Software License Agreement.

Software to be provided pursuant to this Contract may be provided under and subject to separate license terms.

V. Warranty

1. Warranty for IBM Machines

The Contract Vendor warrants that each IBM Machine (as this term is defined in the IBM Customer Agreement) is free from defects in materials and workmanship and conforms to its Specifications (as this term is defined in the IBM Customer Agreement).

The warranty period for an IBM Machine is a fixed period commencing on its Date of Installation (as this term is defined in the IBM Customer Agreement) and specified in a Purchase Order. During the warranty period, the Contract Vendor provides repair and exchange Service for the IBM Machine, without charge, under the type of Service the Contract Vendor designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and the Contract Vendor is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, the State may return it to the Contract Vendor for a refund.

Additional terms regarding Service for Machines during and after the warranty period are in Part 5 of the IBM Customer Agreement.

2. Warranty for ICA Programs

The Contract Vendor warrants that each warranted ICA Program (as this term is defined in the IBM Customer Agreement), when used in the Specified Operating Environment (as this term is defined in the IBM Customer Agreement), will conform to its Specifications.

During the warranty period, the Contract Vendor provides defect-related Program Services (as this term is defined in the IBM Customer Agreement) without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when

its Program Services are no longer available; provided, however, that the Contract Vendor shall provide Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

If an ICA Program does not function as warranted during the first year after the State obtains its license and the Contract Vendor is unable to make it do so, the State may return the ICA Program and the charges the State paid for the license will be refunded. To be eligible, the State must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding Program Services are contained in Part 4 of the IBM Customer Agreement.

3. Warranty for IBM Services

The Contract Vendor warrants that it performs each Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Contract, an Attachment, Purchase Order or Work Order. The State agrees to provide timely written notice of any failure to comply with this warranty so that the Contract Vendor can take corrective action.

4. Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, the Contract Vendor's statement of limited warranty included with the Machine applies in place of federal or state consumer warranty laws, except where the federal or state consumer warranty laws expressly override or otherwise preclude any different or conflicting warranties.

The warranties stated above will not apply to the extent that a warranty claim results from Customer's misuse (including, but not limited to, use of any Machine capacity or capability, other than that authorized by the Contract Vendor in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Customer or a third party, or failure or damage caused by a product for which the Contract Vendor is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

**THESE WARRANTIES ARE THE STATE'S EXCLUSIVE WARRANTIES AND
REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED,**

INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. Items Not Covered by Warranty

The Contract Vendor does not warrant uninterrupted or error-free operation of a Product or Service or that the Contract Vendor will correct all defects.

The Contract Vendor will identify IBM Machines and ICA Programs that it does not warrant.

Unless otherwise specified in an Attachment, Purchase Order or Work Order, the Contract Vendor provides Materials, non-IBM Products (including those provided with, or installed on, an IBM Machine at the State's request), and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to the State. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

W. Publicity.

Except to the extent authorized or required under federal or State law, neither party will use the other party's name, logo, marks, or otherwise make reference to this Contract, without the other party's prior written consent. Any publicity given to the program, publications or services provided under this Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in this Contract prior to its approval by the State

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

X. Notices.

If either Party is required to give notice to the other under this Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United State mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either Party must notify the other of a change in address for notification purposes. All notices to the State shall be addressed as follows:

Roger Bacchus, CPM
Acquisitions Management Specialist
Materials Management Division
50 Sherburne Avenue
112 State Administration Building
St. Paul MN 55155
Fax: 651.297.3996
E-mail: roger.bacchus@state.mn.us

All notices to the Contract Vendor shall be addressed as follows :

Steve Stiles
IBM Sales & Distribution, Public Sector
Client Executive – Education and Government
Sales Leader
650 3rd Ave. South
Minneapolis, MN 55402-4300

Y. Default.

A State Purchase Order constitutes a binding contract. All commodities furnished will be subject to inspection and acceptance by the requesting agency after delivery. No substitutions or cancellations are permitted without approval of the State contracting agency. Back orders, defaults in promised delivery, or failures to meet specifications in the Purchase Order and/or this Contract authorize the State contracting agency to (1) cancel this Contract or the Purchase Order, or any portion of it, (2) purchase elsewhere, and (3) charge the full increase, if any, in cost and administrative handling, to the defaulting Contract Vendor. In the event of default, the State reserves the right to pursue any other remedy available by law.

The Parties acknowledge that disputes under this Agreement may arise from time to time, and agree that, subject to the other provisions of this Contract, each shall attempt to resolve such disputes according to the provisions of this Section. The Parties do not intend to limit the kind of dispute or disagreement arising under this Contract which may be submitted to the dispute resolution procedures set forth in this Article 2.Y.

In the event of an issue or question by either Party regarding any aspect of this Contract, both Parties shall attempt to resolve that issue or answer that question amicably before proceeding to other remedies. Such resolution efforts shall include communications between Contractor's representative and the State's representative outlining the particular issues, proposed solutions, any other items necessary to resolve the situation without reference to the remedies set forth below. The Parties agree that the request for resolution and any responses thereto should be completed no later than 30 calendar days after the request for resolution is made.

In the event that a request for resolution does not result in a mutually agreeable solution to the dispute, either Party shall have the right to request that the other Party appoint a designated representative that has authority to settle the dispute and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement, or who were engaged in any prior attempt to resolve the dispute.

Any unresolved disputes between the customer and the Contract Vendor must be brought to the AMS for initial resolution. A recommendation or determination of the AMS may be reviewed by the MMD Director, Deputy Commissioner, or Commissioner, as appropriate.

Notwithstanding the provisions of this Article 2.Y., upon a breach of this Contract by either Party or a dispute hereunder, the non-breaching Party shall be entitled to pursue any additional remedies it may have at law or in equity.

The exercise of any of the remedies set forth in this Article 2.Y. shall not limit or constitute a waiver of the Parties' rights to pursue additional remedies set forth herein, except where otherwise agreed to in writing by the Parties.

A Contract Vendor may be debarred; removed from the State's vendor's list or suspended from receiving a contract for failure to comply with terms and conditions of

this Contract, or for failure to pay the State for the State's direct damages and related costs reasonably incurred as a result of Contract Vendor's defaults. Suspension, debarment, or other proceedings relating to the Contract shall be as provided in Minn. Rules 1230.1000–1230.1200 and applicable law. This is in addition to any other remedies expressly provided for in this Contract. Any unresolved disputes between the customer and the Contract Vendor must be brought to the AMS for initial resolution.

Z. Additional Requirements.

1. The Contract Vendor shall maintain, in accordance with Contract Vendor's standard procedures, up-to-date documentation and manuals on systems relevant to this Contract. Documentation shall conform in all material respects with the standards agreed upon by the Parties.
2. The rights and remedies set forth herein, unless otherwise specifically provided, are not exclusive and are in addition to any of the rights and remedies provided by law or equity.
3. All equipment purchased under this Contract shall be packed in accordance with good commercial practice to ensure delivery in good condition, and acceptance by common carriers for transportation. Merchandise shall be marked and packing slips included to permit checking of shipments against purchase orders and invoices. No extra charges will be allowed for packaging or packing.

AA. Performance While Dispute is Pending.

Notwithstanding the existence of a dispute, the Parties shall continue without delay to carry out all of their responsibilities under this Contract, except where: (i) the responsibilities in question form the basis of the dispute; or (ii) the payment for the Products or Services is the subject of the dispute. Any failure to perform in the event of a dispute, unless excused in the preceding sentence, shall be considered a material breach.

Any unresolved disputes between the Customer and the Contract Vendor must be brought to the AMS for initial resolution. A recommendation or determination of the AMS may be reviewed by the MMD Director, Deputy Commissioner, or Commissioner, as appropriate.

BB. Acceptance Test (when applicable).

The Parties shall agree upon an Acceptance Test that demonstrates to the satisfaction of the State that all deliverables conform in all material respects to the representations set forth in the Contract Vendor's published specifications and claims. The Contract Vendor must submit such Acceptance Test for consideration within fourteen (14) days of written request by the agency. The State shall have the right to, within thirty (30) days of the Contract Vendor's Acceptance Test submission add to, modify, or replace the Contract Vendor's proposed Acceptance Test with equivalent tests which, in the State's opinion, more adequately demonstrate system capabilities for proposed State applications; subject to the Contract Vendor's written objection to any capabilities out of the scope of the Contract Vendor's published specifications and claims. The Acceptance Test will be performed on the installed system at the site using the actual Products, Software and interfaces which will be acquired by the State. No payment for deliverables will be authorized by the State until this Acceptance Test is satisfactorily completed and the State notifies the Contract Vendor of such acceptance in writing. If satisfactory performance is not achieved within ten business (10) days of the start of the Acceptance Test, the Contract Vendor's Products and/or software is subject to rejection and the termination of the Purchase Order or Work Order. In the event of such termination, the Contract Vendor shall be liable to the State for shipping, install, de-install, and for costs pursuant to this Contract.

CC. Force Majeure.

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot 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 defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

DD. State Requirements.

The Contract Vendor is responsible for presenting information to the State, Agencies of the State and CPV members regarding Product compliance with State requirements. The Contract Vendor's catalog and other marketing materials utilized to offer Products

under this Contract shall affirmatively state when a Product is in compliance with the Americans with Disabilities Act (ADA), the Nonvisual Access Standards (Minn. Stat. Section 16C.145), the federal Rehabilitation Act, and the Energy Star Standards. The Contract Vendor must also indicate in the catalog or other marketing materials if the Product will not operate, is not intended to operate, or will not operate under full manufacturer's warranty using paper with a post-consumer recycled content of 30 percent or greater. If any descriptive marketing materials are silent as to any or all of these requirements (e.g., ADA compliance, functions utilizing 30% recycled content paper), the Contract Vendor agrees that the customer can assume the Product meets or exceeds the State requirements.

EE. Survival of Terms.

The warranties, representations, rights, liabilities and obligations of the State and Contract Vendor for acts or omissions that occurred before expiration, cancellation or termination of this Contract, and any other provisions of this Contract which, by their terms, are contemplated to survive or to be performed after expiration, cancellation or termination of this Contract, will survive expiration, cancellation or termination thereof. These rights and duties include, but are not limited to: Article 1 Sections K. Governing Law; and L. Jurisdiction and Venue; and Article 2 Sections I. Indemnification, Hold Harmless and Limitation of Liability; J. Intellectual Property Indemnification; P. State Audits; Q. Government Data Practices Act; T. Confidentiality; and W. Publicity.

FF. Affirmative Action.

The Contract Vendor shall comply with Minn. Stat. Section 363A.36 and Minnesota Rules 5000.3400-5000.3600 to the extent applicable to the Services which Contract Vendor will provide under this Contract.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- (a) The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or

- termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (c) In the event of the contractor=s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363.073, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor=s obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants, and the rights of employees and applicants.
 - (e) The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. ' 363.073, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
 - (f) Consequences. The consequences of a Contract Vendor=s failure to implement the 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 commissioners to approve subsequent plans, and termination of all or part of this Contract by the commissioner of the State.
 - (g) Certification. The Contract Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. ' 363.073 and Minnesota Rules 5000.3400 to 5000.3600 and is aware of the consequences for noncompliance.

GG. PRODUCTS CONTAINING CERTAIN TYPES OF POLYBROMINATED DIPHENYL ETHER BANNED.

Contract Vendor certifies that they have read and will comply with Laws of Minnesota, 2007, Chapter 57 (to be codified at Minn. Stat. §§ 325E.385-325E.388) as provided

below and to the extent applicable to the Products and Services which Contract Vendor will provide under this Contract.

325E.385 PRODUCTS CONTAINING POLYBROMINATED DIPHENYL ETHER.

Subdivision 1. **Definitions.** For the purposes of Sections 325E.386 to 325E.388, the terms in this Section have the meanings given them.

Subd. 2. **Commercial decabromodiphenyl ether.** "Commercial decabromodiphenyl ether" means the chemical mixture of decabromodiphenyl ether, including associated polybrominated diphenyl ether impurities not intentionally added.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of Pollution Control Agency.

Subd. 4. **Manufacturer.** "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an importer or domestic distributor of a noncombustible product containing polybrominated diphenyl ethers.

Subd. 5. **Polybrominated diphenyl ethers or PBDE's.** "Polybrominated diphenyl ethers" or "PBDE's" means chemical forms that consist of diphenyl ethers bound with bromine atoms. Polybrominated diphenyl ethers include, but are not limited to, the three primary forms of the commercial mixtures known as pentabromodiphenyl ether, octabromodiphenyl ether, and decabromodiphenyl ether.

Subd. 6. **Retailer.** "Retailer" means a person who offers a product for sale at retail through any means, including, but not limited to, remote offerings such as sales outlets, catalogs, or the Internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

Subd 7. **Used product.** "Used product" means any product that has been previously owned, purchased, or sold in commerce. Used product does not include any product manufactured after January 1, 2008.

325E.386 PRODUCTS CONTAINING CERTAIN POLYBROMINATED DIPHENYL ETHERS BANNED; EXEMPTIONS.

Subdivision. 1. **Penta- and octabromodiphenyl ethers.** Except as provided in subdivision 3, beginning January 1, 2008, a person may not manufacture, process, or distribute in commerce a product or flame-retardant part of a product containing more than one-tenth of one percent of pentabromodiphenyl ether or octabromodiphenyl ether by mass.

Subd. 2. **Exemptions.** The following products containing polybrominated diphenyl ethers are exempt from subdivision 1 and Section 325E.387, subdivision 2:

(1) the sale or distribution of any used transportation vehicle with component parts containing polybrominated diphenyl ethers;

(2) the sale or distribution of any used transportation vehicle parts or new transportation vehicle parts manufactured before January 1, 2008, that contain polybrominated diphenyl ethers;

(3) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of equipment containing polybrominated diphenyl ethers and used primarily for military or federally funded space program applications. This exemption does not cover consumer-based goods with broad applicability;

(4) the sale or distribution by a business, charity, public entity, or private party of any used product containing polybrominated diphenyl ethers;

(5) the manufacture, sale, or distribution of new carpet cushion made from recycled foam containing more than one-tenth of one percent polybrominated diphenyl ether;

(6) medical devices; or

(7) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of telecommunications equipment containing polybrominated diphenyl ethers used by entities eligible to hold authorization in the Public Safety Pool under Code of Federal Regulations, title 47, part 90.

In-state retailers in possession of products on January 1, 2008, that are banned for sale under subdivision 1 may exhaust their stock through sales to the public. Nothing in this Section restricts the ability of a manufacturer, importer, or distributor from transporting products containing polybrominated diphenyl ethers through the state, or storing such products in the state for later distribution outside the state.

325E.388 PENALTIES. A manufacturer who violates Sections 325E.386 to 325E.388 is subject to a civil penalty not to exceed \$1,000 for each violation in the case of a first offense. A manufacturer is subject to a civil penalty not to exceed \$5,000 for each repeat offense. Penalties collected under this Section must be deposited in an account in the special revenue fund and are appropriated in fiscal years 2008 and 2009 to the commissioner to implement and enforce this Section.


HH. EMPLOYEE STATUS.

By order of the Governor's Executive Order 08-01, the Contract Vendor certifies its compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et. seq.)

and certifies its use of the *E-Verify* system established by the Department of Homeland Security, as described in the attached **State of Minnesota — Immigration Status Certification**

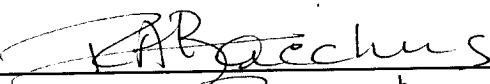
SIGNATURE PAGE

International Business Machines Corporation

BY: 
PRINTED NAME: Steve Stiles
TITLE: Client Executive
DATE: 3/26/09

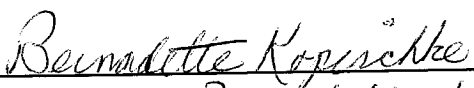
STATE OF MINNESOTA - MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. Section 16C.03, Subd. 3

BY: 
PRINTED NAME: ROGER A. BAECCHUS
TITLE: AMS
DATE: 3/26/09

STATE OF MINNESOTA - COMMISSIONER OF ADMINISTRATION

Or delegated representative

BY: 
PRINTED NAME: Bernadette Kopischke
TITLE: Acq. Supvr.
DATE: 3/26/09

State of Minnesota — Immigration Status Certification

By order of the Governor's Executive Order 08-01, vendors and subcontractors MUST certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et seq.) and certify use of the *E-Verify* system established by the Department of Homeland Security.

E-Verify program information can be found at <http://www.dhs.gov/ximgtn/programs>.

If any response to a solicitation is or could be in excess of \$50,000, vendors and subcontractors must certify compliance with items 1 and 2 below. In addition, prior to the delivery of the product or initiation of services, vendors MUST obtain this certification from all subcontractors who will participate in the performance of the contract. All subcontractor certifications must be kept on file with the contract vendor and made available to the State within five (5) business days of the State's request.

1. The company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States immigration laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract and maintain subcontractor certifications for inspection by the state if such inspection is requested as noted above; and

2. By the date of the delivery of the Product and/or performance of Services, the company shown below will have implemented or will be in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

I certify that the company shown below is in compliance with items 1 and 2 above and that I am authorized to sign on its behalf.

Name of Company: IBM Date: 3.26.09

Authorized Signature: [Signature] Telephone Number: 612-802-81

Printed Name: _____ Title:

If the contract vendor and/or the subcontractors are not in compliance with the Immigration Reform and Control Act, or knowingly employ persons in violation of the United States immigration laws, or have not begun or implemented the *E-Verify* program for all newly hired employees in support of the contract, the state reserves the right to determine what action it may take. This action could include, but would not be limited to cancellation of the contract, and/or suspending or debarring the contract vendor from state purchasing.

For assistance with the *E-Verify* Program

Contact the National Customer Service Center (NCSC) at **1-800-375-5283** (TTY 1-800-767-1833).

For assistance with this form, contact:

Mail: 112 Administration Bldg, 50 Sherburne Ave. St. Paul, MN 55155

E-mail: MMDHelp.Line@state.mn.us

Telephone: 651.296.2600

Persons with a hearing or speech disability may contact us by dialing 711 or 1.800.627.3529

State Of Minnesota – Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time in the solicitation and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification.**

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.

Your response will be rejected unless your business:

1. has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- ☒ We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C.**

Include a copy of your certificate with your response.

- ☐ We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____ (date). [If the date is the same as the response due date, indicate the time your plan was received: _____ (time). **Proceed to BOX C.**

- ☐ We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

Please note: Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a

municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

BOX B – For those companies not described in BOX A

Check below.

- ☐ We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

BOX C – For all companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: IBM Date 3/26/09
Authorized Signature: Steve Stiles Telephone number: 612-802-8111
Printed Name: Steve Stiles Title: Client Executive

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services Section

Mail:	190 East 5 th St., Suite 700 St. Paul, MN	TC	(651) 296-5663	Toll Free:	800-657-3700
	55101	Metro:			
Web:	www.humanrights.state.mn.us	Fax:	(651) 296-9042	TTY:	(651) 296-1234