

Guidelines for Vendor Contracts

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Introduction

Technology solutions are increasingly required to address complex business issues and concerns and technical issues for our government organizations. It is imperative that these are structured to provide value over the life of the solution, which may often be 10 years or more. Consequently, such contracts can be complex, time-consuming, and expensive to formulate. It is essential for government organizations, including MnCCC, to maintain a set of standard contract clauses and policies to use on all technology contracts.. This also ensures that the contract is protecting the investments made by the government organization and prevent duplicating unnecessary effort by ensuring template language regarding.

Audience

The MnCCC Guidelines for Vendor Contracts apply to all individuals and vendors that support, interact, or provide managed services for MnCCC members through approved user group agreements. The intended purpose of this document is to provide vendors that provide software support and services a standard guideline and language examples to include in formal contracts with MnCCC.

Contract Management

MnCCC has developed the Contract Approvals Process (CAP) to protect Members through solid contract terms, ensuring that statutory requirements are met, and that the recommendations and requirements provided by Minnesota Counties Intergovernmental Trust (MCIT). This includes developing a contract that protects MnCCC investments and ensures a high level of satisfaction with the completed project, as well as specific, effective remedies for those projects that do not go as planned.

This policy describes and suggests several key contract clauses that will enable us to prepare better contracts with our vendors. Each contract is different, requiring different clauses, and should be reviewed with that in mind.

This document provides template contract language to incorporate clauses and policies into finalized contracts at the recommendation of CAP. Using the template contract language outlined in this document will provide significant benefits for the life of the business and/or technical system. The contract is typically the cornerstone of the transaction that may dictate the overall success or failure of our projects. By establishing a solid contract with our vendors, our probability of success increases, and we will likely have more successful relationships with our vendors.

How to Use this Document

MnCCC has developed the Guidelines for Vendor Contract to assist our Contract Advisory Panel (CAP) and the User Group contract team to review contracts that are proposed by vendors. Each section of this document contains a Purpose section explaining when and why the language should be used, followed by the recommended or required contract language.

MnCCC Contract Process

MnCCC has a Contract Advisory Panel (CAP) that will assist User Groups in reviewing contracts for required terms. User Groups will also be required to have a Contract Work Group to review the contract for pricing, services, term, statements of work, etc. Once both CAP and the User Group are satisfied with the contract terms and language, MnCCC sends the contract to our legal representative for final review. The vendor will also need to approve the final contract.

Contracts are approved by both the User Group and the MnCCC Board. Once approvals are completed, the contract is routed for signature. Typically, contracts are signed by the Board Chair, User Group Chair, and MnCCC's Executive Director; there are, however, some occasional exceptions, but the process for approval remains the same. The same process is completed for contract amendments.

Contract Format and Core Clauses

MnCCC requires that all proposed contracts are delivered to MnCCC in a Microsoft Word document. This allows MnCCC to track changes and return a redlined copy with proposed changes back to the vendor (along with a clean copy). Contract text should be single-column, proper case, and, at a minimum, in 10-point font. ADA compliance is recommended. MnCCC has an Accessibility Policy available on our website for reference if desired.

Ownership

Purpose

MnCCC has two primary types of software contracts. The first is software owned by MnCCC, where MnCCC contracts for development and maintenance and support on owned software. MnCCC should always base initial negotiations on obtaining full ownership of any custom software commissioned and fully paid for by MnCCC. Ownership enables MnCCC to fully control the use, development, distribution, licensure, and other commercialization of such products, which can be helpful in recovering its significant development investments. Ownership conveyances by the creator(s) of an original, copyrightable work must be in writing, and should include conveyance language..:

Ownership language is not required for vendor-owned software contracts, such as Commercial Off-The-Shelf (COTS) software customized for Minnesota. In certain situations, the User Group may want to consider a "first right of refusal" that would allow the User Group the option of purchasing the software, or the first option to purchase with an option to refuse, in the case that the vendor sells the software or business.

Language

- x.1** *Vendor hereby irrevocably transfers, conveys, and assigns to MnCCC and its successors, or assigns Vendor's entire right, title, and interest in and to the original, copyrightable software product(s) to be developed under this Contract, including, but not limited to source code, object code, user documentation, and other deliverables or work*

product(s) created or improved by Vendor under this Contract (collectively, the “Work”).

Vendor represents and warrants that: (a) Vendor's interests conveyed hereunder are original and do not knowingly infringe upon or violate the legal rights of any third parties; (b) the Work does not contain any virus, malware, or other unauthorized code, or any open source or other software code that is not original to Vendor and cannot be freely and fully assigned to MnCCC and its successors or assignees; and (c) Vendor has the full right and authority to execute this Contract and assign full and sole ownership rights in the Work to MnCCC. The rights assigned hereunder include all copyright rights (including any registration applications or registrations with the U.S. Copyright Office), together with the exclusive right to publish, reproduce, transmit, adapt, license, sell, or otherwise use or exploit the Work or any portions thereof, including all existing or subsequent revisions, supplements, derivatives, or versions, in any form, medium, or language for the entire term of copyright, including any renewals and extensions.

Vendor further appoints Owner as Vendor's attorney-in-fact to execute any other documents necessary or desirable to evidence the foregoing assignments.

This assignment is intended to and will be effective as of the initial date(s) of creation for each element of the Work and includes the nunc pro tunc assignment of any preliminary elements created prior to the effective date of this Contract.

License Rights

Purpose

Where acquisition of ownership rights is not cost-effective, or in cases where the software being acquired is a pre-existing template or master national product that is being customized to fit MnCCC’s needs, a license is typically the most cost-effective acquisition alternative. License rights should ideally grant MnCCC and its Members the right and ability to use the software in a manner that eliminates or tightly restricts the owner’s future opportunities for interference and/or additional payment demands. The license should include basic built in grants that will enable MnCCC to utilize the software during the term of and after expiration of any business relationship, provided that MnCCC is not in breach of its obligations to use the license as granted, make all required payments, continues to preserve its confidential status, etc.

Language

x.1 *In exchange for the payments made and to be made as provided in this Contract, Vendor grants to MnCCC and its successors and assigns a perpetual, royalty-free, paid-up nonexclusive, worldwide license to use, copy, modify, and create derivative versions of the Software and Documentation for its benefit and the use and benefit of its Members and other subLicensees. [Optional for licenses that are granted on an annual basis or other specific time period: Such license shall extend through the term of this Contract and a transition period of at least six months following expiration or other termination hereunder, in order to enable and facilitate the migration of Member/Licensee data, and to comply with Minnesota’s Government Data Practices Act and/or applicable laws, regulations, rules and court orders.] Notwithstanding the*

foregoing, the license granted is subject to earlier termination in the event that a court of competent jurisdiction has determined that MnCCC has forfeited and lost its rights to use the Software due to breach or other default in the scope of use authorized under this license.

Source Code; Escrows

Purpose

In order to preserve the ability and rights to continue to use, maintain and improve any software acquired or licensed by MnCCC, adequate provision should be made in any development agreement or master license to provide for the regular update and delivery of then-current program source codes. If MnCCC is the software owner, it is required that contracted vendor provide MnCCC with regularly scheduled delivery of source code, documentation, programmer notes, lists of third-party software, and any other code and documentation to support installing a master copy of the software if needed; this should include an updated copy with all major releases. All documentation will be stored physically in our office, along with maintaining the updated version in OneDrive and Salesforce.

Some developers of master licensed software may resist to direct provision of the source code, and may instead offer a third-party escrow relationship, which would still enable MnCCC to obtain access to the source code under specified circumstances and for limited, defined purposes. In these cases, the escrow clause should conform to the agreed-upon escrow agent's terms and procedures.

The following clause is the simplified, preferred manner for obtaining and maintaining access to software source code, and in cases where the Vendor does not propose a third-party escrow agent for software source code.

Language

- x.1 *Vendor shall provide MnCCC at no charge with a copy of the complete, current version of the system source code upon MnCCC's acceptance of each deliverable as specified in Exhibit A, and otherwise within three business days of MnCCC's written request at any time. For discretionary requests, Vendor may recover actual duplication and shipping costs of up to \$25 per request.*

No Publicity

Purpose

The "No Publicity" clause provides a catch-all provision to stop Vendors from publishing or otherwise promoting their relationship with MnCCC in the media. Not all contractors do good work, so why tie your name to everyone that comes in to do work for you?

In addition to the contract and language, it is in the best interest of the MnCCC vendor relationship to have an agreed upon plan regarding promotion of the new contract and how MnCCC Members can participate in the contract. For example, what is the process when an MnCCC Member contacts

either MnCCC or the vendor requesting a demo, pricing information, and the process to join the User Group?

Language

- x.1 *The Vendor may not disclose the existence and/or any of the Contract terms to any third party, and may not refer to the Contract in publications, advertisements, or other materials or communications, and may use MnCCC as a reference only with MnCCC's prior written consent.*

Staffing Management

Purpose

This clause enables MnCCC to demand priority work and staffing, and to add consequences for Vendors who change staff personnel without MnCCC's permission. This clause also enables MnCCC to replace unsuitable Vendor staff personnel.

Language

- x.1 *MnCCC reserves the right to pre-approve all Vendor staffing assignments. Assigned staff will not be reassigned to other work without MnCCC's prior written consent, other than under exceptional, extraordinary circumstances.*
- x.2 *Without the prior written consent of MnCCC, Vendor is not entitled to reassign or replace either temporarily or permanently the assigned staff who are responsible for performing the Services. MnCCC will not withhold its consent without good reason, and is entitled to attach certain conditions to its consent. The fees charged for the staff originally deployed on the Contract may not be raised if they are replaced.*
- x.3 *If MnCCC wishes to replace staff that is responsible for performing the Services, because it feels that this is either necessary or desirable in the interests of the success of the Contract, Vendor will comply with MnCCC's request. The fee charged will not be any higher than the Contract rate as applied to the staff replaced and shall be reduced if equitable.*
- x.4 *The expertise, qualifications and experience of any replacement staff deployed by Vendor shall be at least equal to those of the original staff.*
- x.5 *Vendor agrees that the failure to maintain staffing as required by this Section will materially and adversely affect the Services, and that any residual negative impact shall entitle MnCCC to an equitable transition credit against fees due for Services of between 10 and 90 days, and computed to approximate the time period required to replace and train suitable staff, and that any loss of staff to other Vendor assignments shall cause MnCCC irreparable harm, requiring Vendor to pay MnCCC liquidated damages equal to \$30,000 per staff member per occurrence.*

Reporting Obligations

Purpose

Timely and honest communications are crucial to the successful project development and management. Since the Vendor will typically staff and manage these projects via a dedicated team, it is helpful for MnCCC stakeholders to receive and review periodic progress reports, completed item checklists, and other timely information. Development contracts can vary greatly in requiring these communications, but a typical clause would establish a procedure and time frame for the Vendor to provide progress reports and other updates to MnCCC.

An example is for the Vendor to provide service reports and project status updates at all regularly scheduled meetings, such as a monthly Advisory/Executive Committee or User Group meeting. It is also helpful for the Vendor to provide a summary of support so the User Group would be aware of topics for training or of any Members that may need additional assistance.

Language

- x.1 *Vendor shall deliver to MnCCC written progress reports (each in a format set forth on Exhibit [x]) on a weekly basis or at other intervals as specified by MnCCC's Executive Director and/or project manager, which shall contain a description of the current project status, specific reporting on applicable milestones or other deadlines, and the work to be completed in the next week. Vendor shall also meet with the MnCCC project leader and other representatives at least at a mutually agreed-upon location, or more often if requested by Customer, to discuss and report on the progress on the Services and the status of the project.*

Database Management and Information System Security

Purpose

Information system security (ISS) is an evolving issue that must be included in each contract to protect the integrity, availability, and confidentiality of automated information of MnCCC and its Member end-users and Licensees, as well as the resources used to access, enter, store, process, and communicate the information. Securing information so that it remains consistent, complete, and accurate is essential to MnCCC's reputation, mission, and critical business objectives, and the successful operation and use of Vendor Software and Services by MnCCC Members and Licensees.

MnCCC and its Members have been entrusted with a variety of sensitive data to accomplish its goals, including data on private individuals that is protected by applicable law. The success of agency programs depends on the availability, integrity, and confidentiality of this data. To protect this data, Vendor must implement data security measures, such as data validation and verification controls, and may also engage assistance with the design and implementation of specific measures to periodically monitor the security and integrity of software and other systems.

MnCCC may, by request of the Board or User Group or at its own discretion, require Vendor to complete a security check that includes detailing processes for securing and storing information,

along with providing updated documentation on cybersecurity insurance and other necessary protective measures.

These controls are used to protect data from accidental or malicious alteration or destruction and to provide assurance to the user that the information meets the expectations about its quality and that it has not been altered.

1. Data will be secured commensurate with its level of sensitivity and criticality, and in accordance with IT industry best practices, as well as any applicable state or federal rules or laws.
2. Databases, and applications that interface with databases, will be configured in accordance with IT security best practices.
3. Integrity verification programs, such as consistency and reasonableness checks, shall be used to search for evidence of data tampering, errors, and omissions, including mandatory compliance with the requirements of new Minnesota Statute § 13.055, and other data protection/breach laws.
4. Reconciliation routines (checksums, hash totals, record counts, etc.) shall be used to ensure software and data have not been modified.
5. If users are monitored and allowed to make updates to a database, these updates should be validated to ensure they are warranted and safe.
6. For databases containing sensitive information, table access controls should be applied. Access to specific information within the database should be limited to only those personnel who need access to that information, and access should be limited to only those functions (e.g., read, write, modify, etc.) required for the person to perform their duties.
7. Database servers shall be configured to only allow connections from authorized, trusted sources (such as specific web servers to which they supply information).
8. For sensitive data, audit trails shall be created and maintained by the Vendor within the database to track transactions and provide accountability.
9. Securing sensitive information by selectively encrypting data within the database is encouraged.
10. Programs or utilities that may be used to maintain and/or modify sensitive databases and other software modules that could affect or compromise the confidentiality, integrity, or availability of the data, must be carefully controlled.
11. Databases containing non-public information shall never be on the same physical machine as a web server that is open outside of the secure internal MnCCC network.
12. Databases (and database servers) that store public information should ideally be designed and secured in a manner that separates public information from non-public (e.g., private, proprietary, sensitive) database information.
13. Integrity errors and unauthorized or inappropriate duplications, omissions, and intentional alterations will be promptly reported in writing to MnCCC in writing.
14. Database servers and database software must adhere to all MnCCC information security policies and procedures pertaining to servers and systems, including patching, hardening, change control, authentication, etc.

Definitions

1. Availability - Assuring information and communications services will be ready for use when expected.
2. Confidentiality - Assuring information will be kept secret, with access limited to appropriate persons.
3. Data - A representation of facts or concepts in an organized manner in order that it may be stored, communicated, interpreted, or processed by automated means.
4. Database - An organized collection of logically related information stored together in one or more computerized files.
5. Integrity - Assuring information will not be accidentally or maliciously altered or destroyed. Information has integrity when it is timely, accurate, complete, and consistent.
6. Sensitive Data – Any data that is categorized as “sensitive” under MnCCC’s information resource classification policy and framework.
7. Validation - The checking of data for correctness and/or for compliance with applicable standards, rules, and conventions.
8. Verification - The process of ensuring that information has not been changed in transit or in storage, either intentionally or accidentally.

Language

- x.1** *Vendor is obliged to ensure that any of its personnel who provide professional services on any MnCCC Member’s premises, observe MnCCC’s and applicable Members’ security procedures and internal rules as well as applicable state and federal rules or laws. MnCCC will periodically advise the Vendor about these procedures and rules.*
- MnCCC is entitled to require certificates of good conduct to be produced in respect of the Vendor personnel, at least three (3) days before they start work on any Member’s premises.*
- x.2** *MnCCC may require Vendor to carry out and report the results of periodic security checks on the Vendor’s current or proposed Contract personnel, in accordance with the rules usually applied by MnCCC or its Members, as well as any state or federal rules or laws, including but not limited to CJIS backgrounds. MnCCC is entitled to refuse to allow any person whose background is unsatisfactory to MnCCC or its Members to work on the Contract.*
- x.3** *Vendor will monitor and adopt, upgrade and maintain commercially reasonable, industry standard or better policies and procedures for remote access, systems, mobile devices and other network security practices, designed to monitor and minimize Vendor and third party security risks, including such restrictions that will prevent or limit the use, storage or remote access to data of MnCCC Members. Vendor shall also adhere to all then-current MnCCC remote access, security, mobile device or similar policies and other requirements. The Vendor is also required to agree to and abide by each MnCCC’s participating Member’s remote access, security and other requirements necessary to gain access to the participating Member’s systems and/or networks. Except with the prior written consent of MnCCC or the Member whose data is accessed*

by Vendor, no such data will be copied onto portable storage devices and/or taken off premises.

x.4 *The Vendor agrees to implement and use management and maintenance applications and tools, appropriate fraud prevention and detection, and data confidentiality/protection/encryption technologies for endpoints, servers and mobile devices. Including mechanisms to identify vulnerabilities and apply security patches.*

x.5 *The Vendor agrees to implement and use management and maintenance applications and tools, appropriate fraud prevention and detection, and data confidentiality/protection/encryption technologies for endpoints, servers and mobile devices. Including mechanisms to identify vulnerabilities and apply security patches.*

x.6 *The Vendor shall establish and maintain a continuous security program as part of the delivered services. The security program must enable an auditing organization (or its selected third party) to:*

- a. Define the scope and boundaries, policies, and organizational structure of an information security management system;*
- b. Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of the Vendor due to the Services, subject to the terms, conditions and procedures;*
- c. Implement appropriate mitigating controls and training programs, and manage resources; and*
- d. Monitor and test the security program to ensure its effectiveness. The Vendor shall review and adjust the security program in light of any assessed risks.*

x.7 *Physical Access Controls*

- a. The Vendor agrees to restrict physical access to the system(s) containing the MnCCC Members data to authorized personnel with appropriate clearances and access authorizations.*
- b. The Vendor shall enforce physical access authorizations for all physical access points to the facility where information system resides that contains MnCCC Member(s) data;*
- c. The Vendor shall verify individual access authorizations before granting access to the facility containing the information system(s) with MnCCC Member data;*
- d. The Vendor shall control entry to the facility containing the information system that contains MnCCC Member data using physical access devices and, or guards; and*
- e. The Vendor shall change combinations and keys when keys are lost, combinations are compromised, or individuals are transferred or terminated.*
- f. MnCCC and the Vendor shall collaborate on security monitoring and incident response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training. The Vendor shall, at the request of MnCCC or, in the absence of any request from MnCCC, at least quarterly, provide MnCCC with a report of the incidents that it has identified and taken measures to resolve.*

x.8 *Disclosure of Security Breach*

Without limitation on any other provision of this Contract regarding information security or security breaches, the Vendor shall provide notice to MnCCC as soon as possible following the Vendor or MnCCC's discovery or reasonable belief that there has been unauthorized exposure, access, disclosure, compromise, or loss of sensitive or confidential MnCCC's Member's information ("Security Incident").

- a. Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, the Vendor shall provide a written report to MnCCC detailing the circumstances of the incident, which includes at a minimum:
 - i. A description of the nature of the Security Incident;*
 - ii. The type of MnCCC Member information involved;*
 - iii. Who may have obtained the MnCCC Member information;*
 - iv. What steps the Vendor has taken or shall take to investigate the Security Incident;*
 - v. What steps the Vendor has taken or shall take to mitigate any negative effect of the Security Incident; and*
 - vi. A point of contact for additional information.**
- b. Each day thereafter until the investigation is complete, the Vendor shall provide MnCCC with a written report regarding the status of the investigation and the following additional information as it becomes available:
 - i. Who is known or suspected to have gained unauthorized access to the MnCCC's Member's information;*
 - ii. Whether there is any knowledge if the MnCCC's Member's information has been abused or compromised;*
 - iii. What additional steps the Vendor has taken or shall take to investigate the Security Incident;*
 - iv. What steps the Vendor has taken or shall take to mitigate any negative effect of the Security Incident; and*
 - v. What corrective action the Vendor has taken or shall take to prevent future similar unauthorized use or disclosure.**
- c. The Vendor shall confer with MnCCC regarding the proper course of the investigation and risk mitigation. MnCCC reserves the right to conduct an independent investigation of any Security Incident, and should MnCCC choose to do so, the Vendor shall cooperate fully by making resources, personnel, and systems access available to MnCCC and MnCCC's authorized representative(s) or security vendor.*
- d. Subject to review and approval of MnCCC, the Vendor shall, at its own cost, provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised because of the Security Incident. If the Department, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to MnCCC by the Vendor. If the Vendor does not reimburse such costs within thirty (30) calendar days of MnCCC's written request, MnCCC shall have the right to collect such costs.*

Potential Delays

Purpose

The old saying "Time is money" rings true in any technology project. In the layperson's sense of the word, "delay" simply means a postponement in the completion of a task. In the legal sense of the word, "delay" can actually involve several distinct situations that present different legal claims and defenses.

Delays generally fall into two categories: excusable delay and non-excusable delay. Generally speaking, excusable delays are those not caused by the Vendor's lack of performance. Non-excusable delays are those caused by the Vendor's lack of performance or breaches of contract on the job.

Development contracts should also define what happens if a Vendor fails (or refuses) to make timely delivery of any milestone or other interim deliverable (including software, documentation, materials, equipment or any other required project assets) at or prior to the agreed-upon deadline. Each Contract should include language that specifies the process and time period for MnCCC to review and accept or reject a deliverable if it does not conform to specifications, as well as the remedies if the nonconformities are not cured within a reasonable period.

Language for Standard Contracts

- x.1 *If there is any possibility of the work being delayed, Vendor must immediately notify MnCCC in writing of this possibility, and will in doing so explain the reasons for and the consequences of the potential delay, together with proposed action(s) that could be taken to avoid or minimize this and other future potential delays.*
- x.2 *Within seven business days of receiving the notification referred to in the preceding paragraph, MnCCC will notify the Vendor whether or not it agrees with the proposed action and the consequences described by the Vendor. Such an expression of agreement does not imply any acceptance by MnCCC of the cause of the potential delay, and does not waive or otherwise affect any other rights vested in MnCCC under the Contract, or other rights or available remedies.*

Language for Development Contracts

- x.1 *MnCCC shall have a post-delivery inspection/test/acceptance period of at least ___ business days for each deliverable or version, or such longer period as may be specified in Exhibit [x]. Acceptance (or rejection and reason(s) therefore, shall be made in writing by MnCCC within the acceptance period. Services deliverables and any other materials/goods/equipment shall be deemed accepted by MnCCC when, in the sole discretion of MnCCC, the acceptance criteria as detailed in Exhibit [x] have been met. Failure to meet acceptance criteria within a reasonable correction period will entitle MnCCC, at its option, to terminate the Contract (or any severable portion thereof), recover liquidated or other damages, and/or renegotiate Contract pricing, deliverables, time lines or other covenants to compensate for the failure or refusal to deliver any required deliverable or other materials/goods/equipment.*

Liquidated Damages

Purpose

A “liquidated damages” clause imposes a specified pre-negotiated sum on the defaulting contracting party for a specified default in cases where the actual damages will be difficult or impossible to calculate. Liquidated damages are appropriate and useful to define reasonable and negotiated damages to be paid and accepted in the event of late completion or other defaults, and are also useful so that neither party has to bear the additional expense and effort of proving what the actual damages are (or are not).

Language

- x.1 *If the Services have not been performed in full in accordance with the terms of the Contract within the time limit as agreed or extended, the Vendor will owe MnCCC liquidated damages immediately payable in the amount of [%] of the total or maximum Contract price, for every day on which the failure persists, subject to a maximum of [%] of the total or maximum Contract price, and subject to acceleration (excluding delays as defined and subject to the force majeure clause below) to the maximum by MnCCC if it believes that there is no reasonable likelihood of the Services being performed in full.*
- x.2 *The penalty is payable to MnCCC without prejudice to all its other rights, including:*
 - a. *Its right to demand that the Services be performed as agreed; and*
 - b. *Its right to compensation.*
- x.3 *MnCCC shall have the rights to set-off any liquidated damages against the sums owed by MnCCC, irrespective of whether the rights to such sums have been assigned to a third party.*

Progress Payments and Holdbacks

Purpose

Progress payments are an integral contracting tool for fixed-price contracts. They are typically negotiated and provided in recognition of the Vendor’s need for periodic working capital, and work in-process expenditures, and a customer’s willingness to make interim payments on completion of successful milestones. Specific milestones and milestone payments will typically be negotiated and scheduled in detail and on a case-by-case basis to incent swift and full compliance throughout each project, and in coordination with liquidated damages clauses to incent timely or early completion.

Language

- x.1 *Progress payments shall be negotiated in the amount of _____ percent (___%) of the projected value of labor and materials incorporated in the work, based on the sum of the projected Contract prices of labor and material, on the basis of substantiating paid invoices,*

as estimated by MnCCC, less the aggregate of all previous payments, until the work performed under this Contract is fifty percent (50%) complete. When and after such work is fifty (50%) complete, the _____ percent (____%) of value previously retained as a holdback may be reduced to _____ percent (____%) of value completed if Vendor is making satisfactory progress as determined by MnCCC, in its discretion, and providing that there is no specific cause or claim requiring a greater amount to be retained. If at any time MnCCC determines that satisfactory progress is not being made, the retention percentages shall be reinstated for all subsequent progress payments made under this Contract. A milestone and holdback schedule has been attached and incorporated into Exhibit [x] of this Contract by reference.

Proposal Guaranty

Purpose

A proposal guaranty is the security furnished with a bid to guarantee the bidder will enter into the Contract if the bid is accepted. MnCCC rarely uses this option, but it is something to consider in certain large projects.

Language

- x.1** *All bids shall be accompanied by a bidder's security in the amount equal to at least ten percent of the bid. The security shall be in one of the following forms:*
- a. Cashier's check made payable to MnCCC;*
 - b. A certified check made payable to MnCCC;*
 - c. A bidder's bond, executed by an admitted surety insurer, made payable to MnCCC.*

Government Data Practices Act Compliance

Purpose

All government data collected and used in Minnesota is subject to preservation and disclosure under Minnesota's Government Data Practices Act (Minn. Stat. Chapter 13), unless and to the extend a statutory exception exists. Proprietary software owned by MnCCC or other governmental units is expressly excluded from disclosure under Minn. Stat. §§ 13.03 Subd. 5 and § 13.37 Subd. 1(b) as "trade secret information".

Programs and systems that store, organize and allow electronic access to government records must be designed to facilitate the public's right to access and make copies of such data, which is why all Vendors should be required to acknowledge their obligations to develop and maintain software that complies with the Government Data Practices Act.

Language

- x.1** *All data collected, created, received, maintained, disseminated or used in software designed for MnCCC and its Members subject to the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13, and any other applicable state statutes and rules adopted to implement the Act as well as other applicable state and federal laws, including those on data privacy. Vendor agrees to abide by these statutes, rules and regulations currently in effect and as they may be amended. Vendor designates [Name] as its “reasonable authority” pursuant to the Minnesota Government Data Practices Act for purposes of this Contract, the individual responsible for the collection, reception, maintenance, dissemination, and use of an data on individuals and other government data including summary data. Any replacement of Vendor’s responsible authority will be effective on MnCCC’s receipt of Vendor’s written notice thereof.*

Subcontracts

Purpose

A Subcontract is defined as any contract to furnish supplies or services to assist Vendor (the prime contractor) in performance of the Contract. Subcontracting is a common Vendor request; however, it is imperative that all subcontractors are pre-approved by MnCCC in advance of any proposed subcontract work. All subcontractors must also acknowledge and accept the terms of the Contract with the prime contractor (or Vendor), and be fully qualified and trained to provide Services in a professional and timely manner.

Language

- x.1** *Vendor shall not enter into any subcontract, or issue any purchase order for the completed work, or any substantial part of the work, unless in each instance, prior written approval shall have been given by MnCCC and Vendor complies with the requirements and procedures identified in this Section. Failure to comply with this requirement may result in breach or termination of the contract. Vendor shall be fully responsible to MnCCC for acts and omissions of Vendor's subcontractors and all persons, either directly or indirectly employed by them, and shall agree in writing with Vendor to accept and perform all services in the manner required or otherwise specified under the terms of the Contract.*
- x.2** *On the terms and conditions set forth herein, Vendor may engage Subcontractors during the term hereof to perform information technology time and materials project Services for the Contract, and each approved Subcontractor hereby accepts such engagement. Subcontractor agrees to use its best efforts, at a level consistent with or superior to Vendor’s experience and expertise in the IT industry, in the performance of the Services called for hereunder. Upon selection by Contactor, in its sole discretion, of any one or more Subcontractor employees, Vendor shall provide required information for each Subcontractor to MnCCC, including in all cases the following:*

- a. *The name(s) of the Subcontractor employee(s) needed by Vendor (each, an "Assigned Employee");*
 - b. *The name and location for which the Assigned Employee shall work;*
 - c. *The description of skills required;*
 - d. *The nature of the work to be performed by each Assigned Employee;*
 - e. *The time period for which Vendor will utilize each Assigned Employee;*
 - f. *The hourly fee or other basis of compensation by Vendor to the Subcontractor; and*
 - g. *Such other information as may be reasonably requested.*
- x.3** *If a Subcontractor employee begins work for Vendor, and MnCCC determines after the first review of the Subcontract work, that the Subcontractor employee does not have the skills or capabilities necessary to complete the job as requested in the original requisition, or is otherwise unsuitable to MnCCC, MnCCC may request that the resources be replaced immediately, and Vendor shall also require that the Subcontractor's replacement employee replaced during such first review be provided at no charge for the first 5 business days of work after replacement, and will make any other equitable adjustments or accommodations resulting from the original performance, any rework or other damages resulting therefrom. This equitable adjustment principle shall also apply to any and all hardware or firmware supplied or sourced through the Vendor, as well as any subsequent replacement requests by MnCCC.*
- x.4** *Vendor shall remain fully responsible and liable for the performance of all Subcontractors and shall compensate said Subcontractors in compliance with the requirements of Minnesota Statute § 471.425. Including prompt payment to all subcontractors.*

Assignments

Purpose

A companion issue involves MnCCC's ability to evaluate and control any propose Vendor assignment, delegation or other transfer of the Contract, or any subset of Contract rights and/or obligations. Without an express prohibition or restriction, contracts are presumed to be assignable under Minnesota law.

The recommended solution is to prohibit Vendors from making any assignments or other transfers, or, in the alternative, to condition them on obtaining MnCCC's prior written consent. Some Vendors may try to negotiate exceptions to this principle for mergers, sales of businesses, etc., which can be addressed on a case-by-case basis, or preferably, by promising not to unreasonably withhold, delay or condition MnCCC's prior written consent.

The preferred version of language allows MnCCC the freedom to grant, deny or condition in its sole discretion.

Language

- x.1** *Vendor shall not assign nor transfer or delegate any right or obligation under this Contract without the prior written consent of MnCCC subject to the foregoing, this Contract shall bind and benefit the parties and their respective successors and permitted assigns.*

An alternative version of language is an acceptable compromise covenant that still gives MnCCC prior notice of and the ability to challenge unacceptable or undesirable proposed transfers.

- x.2** *Vendor shall not assign nor transfer or delegate any right or obligation under this Contract without the prior written consent of MnCCC, which consent shall not be unreasonably withheld, delayed or conditioned. Subject to the foregoing, this Contract shall bind and benefit the parties and their respective successors and permitted assigns.*

MnCCC Insurance Requirements

Purpose

MnCCC insurance requirements specify then-current types of policies and minimum amounts of coverage required by the Vendor in order to do business with MnCCC, and are typically based on the then-current minimum coverages and coverage standards recommended by the Minnesota Counties Intergovernmental Trust (MCIT).

MnCCC also requires vendors to provide certificates of insurance with MnCCC named as proof for all contracts.

Language

- x.1** *Vendor shall not commence work under the Contract until it has obtained at its own cost and expense all required insurance coverage identified herein. All insurance coverage is subject to review and approval of MnCCC and shall be maintained by Vendor until final completion of the work.*
- x.2** *MnCCC shall not accept any insurance coverage provisions under which Vendor or its insurer(s) attempt or purport to avail themselves of any governmental right of immunity available to MnCCC as a joint powers organization, or any of its Members, pursuant to any common law doctrine, Minnesota Statutes or other authority.*
- x.3** *Workers Compensation. Insurance covering all employees meeting statutory limits in compliance with the applicable state and federal laws. The coverage must include Employers' Liability with limits of at least \$500,000 for each claim; and at least \$500,000 for each occurrence; and \$500,000 aggregate.*
- x.4** *Comprehensive General Liability. Coverage shall have minimum limits of \$1,500,000 per occurrence and \$3,000,000 general aggregate, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations (if*

applicable); Contractual Liability; Explosion, Collision and Underground (XCU); Hazard Liability (if applicable); Personal Injury Liability; and Aircraft and Watercraft Liability (if applicable).

- x.5** *Business Auto Liability. Coverage shall have minimum limits of \$1,500,000.00 Combined Single Limit for Bodily Injury Liability and Property Damage*
- x.6** *Liability. This shall include: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership.*
- x.7** *Professional Liability. Coverage shall have minimum limits of \$2,000,000.00 per wrongful act or occurrence, and \$4,000,000.00 annual aggregate limit.*
- x.8** *Special Requirements:*
 - x.8.1** *MnCCC is to be included as an “Additional Insured” on both the Comprehensive General Liability and Business Auto Liability Policies.*
 - x.8.2** *Current, valid insurance policies meeting the requirements herein identified shall be filed with MnCCC before the Vendor commences a project and maintained during the named project's duration. Renewal Certificates shall be sent to MnCCC within thirty (30) days prior to any expiration date. There shall also be a thirty (30) days notification to MnCCC in the event of cancellation or modification of any stipulated insurance coverage.*
 - x.8.3** *It shall be the responsibility of the Vendor to insure that all subcontracts comply with the same insurance requirements that he/she is required to meet.*

Additional Insurance Considerations

Additional insurance to be considered for contracts may include, but not be limited to:

1. Data Breach/Network and Cybersecurity Insurance
2. Business Interruption
3. Intellectual Property Infringement

Business Continuity

In the case of a critical software and/or hosted solution, Vendors should be required to provide and incorporate a Business Continuity Plan for the service(s) provided to MnCCC Members. Business Continuity Standards that are acceptable are as follows:

- ISO 22301 (formerly BS25999)
- NFPA 1600
- ASIS Business Continuity Management Standard
- ASIS SPC.1: Organizational Resilience
- Federal Continuity Directives (FCD 1 / FCD 2)
- Continuity Guidance Circulators (CGC 1 / CGC 2)
- Or other plans approved by MnCCC and included in the Contract

Virus, Malware, Unapproved, and/or Unauthorized Code

Purpose

Current business practices favor electronic distribution of Vendor's software, data, help files, etc. This can be achieved either via an electronic download of information through the Internet, or through the receipt of electronic media (e.g. DVD, CD, tape, etc.). It is imperative that the Vendor take responsibility and full liability for delivering their electronic files to MnCCC free of viruses, malware or unapproved/unauthorized code.

Language

- x.1 *Virus, Malware, Unapproved and/or Unauthorized Code Warranty. Vendor warrants and represents that any data, programs, hardware or firmware provided, or sourced, by Vendor to MnCCC shall be free, at the time of shipment, of any computer Virus, Malware, Unapproved and/or Unauthorized Code.*

"Virus, Malware, Unapproved and/or Unauthorized Code" means any harmful or hidden programs or data incorporated therein with malicious or mischievous intent, including any code, program or device that would shut off or otherwise prohibit or impede unrestricted access and use by MnCCC, its Members and other Licensees. This would also include, but not be limited to, the entering of any illegal, Virus, Malware, Unapproved and/or any Unauthorized code containing or triggering any copyright, mentally disturbing, vulgar, adult or porn type virus, malware, trojans, bugs, tracking or reporting code or device, politically motivated, or other harmful or unwanted data into systems and/or networks of MnCCC Members or Licensees.

- x.2 *Remedies for Breach of Virus, Malware, Unapproved and/or Unauthorized Code Warranty. Vendor shall indemnify, defend, and hold MnCCC harmless from all losses, damages, judgments, settlements, attorney's fees, costs and expenses incurred by MnCCC as a result of any Virus, Malware, Unapproved and/or Unauthorized Code introduced by Vendor, and shall indemnify MnCCC for the resultant cost of: (i) curtailing the spread of said Virus, Malware, Unapproved and/or Unauthorized Code; (ii) correction of all affected system(s) used for the benefit of MnCCC (and temporary replacement of those affected system(s) which can be corrected during period of correction). In addition, Vendor shall, at its option, immediately replace all system(s) which cannot be corrected or cured within a reasonable period of time or shall immediately reestablish the affected system(s) to be functionally equivalent to that which existed prior to the introduction of the Virus, Malware, Unapproved and/or Unauthorized Code. Vendor shall also be liable for all costs associated with correcting the issue, including but not limited to MnCCC attorney fees and reimbursement to Members for time and expenses.*

Performance Bonds

Purpose

A performance bond provides for specific monetary payment to a beneficiary if the Vendor fails to do something or otherwise breaches a contract. It may be a surety bond purchased from an insurance company, or cash held in an escrow account by a bank or a third party, and serves a different function from the proposal guaranty bond identified above.

Rarely used in MnCCC contracts, but an option for large projects.

Language

- x.1** *In case of default by the Vendor, and in addition to its other available rights and remedies, MnCCC may procure the articles or services from other sources and hold the Vendor responsible for any excess cost occasioned thereby. MnCCC reserves the right to require sufficient surety/performance bonds or other acceptable alternative guarantees from the Vendor without expense to MnCCC.*

Indemnification

Purpose

All MnCCC agreements should include negotiated indemnification for Vendor performance breaches or other failures. These clauses are often heavily negotiated, so the initial proposal should always be to request unlimited indemnification for any and all claims resulting from a breach of warranty, failure or refusal to perform as agreed or any other event or condition that damages MnCCC or its Members or Licensees.

Vendors will often ask that indemnification be excluded for acts or omissions within MnCCC's control (e.g. unauthorized alterations or use with non-integrated hardware or software), and/or that damage claims be capped at some dollar amount, limited in time, or subject to a "deductible" by MnCCC before coverage applies. All of these issues can further be negotiated by the type of claims, as certain critical claims relating to intellectual property, trade secret misappropriation or other Vendor failures can often be excluded (or subject to a higher cap and looser restrictions) from any negotiated limits on indemnification. MnCCC should also insist that any negotiated limits shall not apply to any insurance claims proceeds available under any of the required coverage.

Vendors will also usually want to define the specific procedures that MnCCC must follow in making indemnification claims, to ensure that the Vendor has timely notice, all necessary claim information, and promises of cooperation and non-interference, in order to maximize the Vendor's ability to resolve indemnification claims. Since these concepts all limit or exclude MnCCC's rights and benefits, they should not be included in initial drafts, and evaluated on a case-by-case basis.

Language

The language provided below breaks down indemnification into general (x.1) and specific intellectual property claims (x.2, which includes an alternate, shorter version of the virus warranty identified above), with several common specific remedies included to resolve copyright or other third party claims by providing non-infringing substitutes. If requested, an indemnification procedures clause in substantially the form of x.3 below should be acceptable to manage the indemnification process.

- x.1** *Any and all claims that arise or may arise against Vendor, its agents, servants or employees as a consequence of any act or omission on the part of Vendor or its agents, servants, or employees while engaged in the performance of this Contract shall in no way be the liability, obligation or responsibility of MnCCC or its participating Members. Vendor shall indemnify, defend and hold harmless MnCCC, its Members, and their respective agents, officers, employees and other representatives against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which MnCCC, its Members, agents, officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of Vendor, its agents, servants or employees, in the execution, performance, or failure to adequately perform Vendor's obligations pursuant to this Contract.*
- x.2** *Vendor warrants and represents that any data or programs provided to MnCCC shall be original, copyrightable works of authorship created by Vendor and its employees, and shall be free, at the time of shipment, of any computer virus, malware or other unauthorized code. "Virus and malware" shall be defined as any harmful or hidden programs or data incorporated therein with malicious or mischievous intent (the "Virus"). Vendor shall indemnify, defend and hold harmless MnCCC, its Members, and their respective agents, officers, employees and other representatives from all losses, damages, judgments, settlements, attorney's fees, costs and expenses incurred by MnCCC as a result of any breach of the warranties identified in Section [x] of this contract, including, but not limited to payment or reimbursement of the resultant cost of: (i) curtailing the spread of said Virus, or otherwise mitigating the damages accruing from any infringement, misappropriation or other third party claims; (ii) correction of all affected system(s) used for the benefit of MnCCC (and temporary replacement of those affected system(s) which can be corrected during period of correction). In addition, Vendor shall, at its option, immediately replace all system(s) which cannot be corrected or cured within [mutually agreed upon timeframe] or shall immediately reestablish the affected system(s) to be functionally equivalent to that which existed prior to the event that resulted in breach of the above warranties and representations.*
- x.3** *In case any claim is made as to which MnCCC may be entitled to seek indemnity under this Agreement, including, but not limited to any third party claims, MnCCC shall first give Vendor timely notice of such claim and the opportunity to defend or compromise such claim. Such notice shall be given in writing, and shall describe the claim or claims involved and the Vendor shall have 10 days to elect in writing whether or not to assume the defense of such claim.*

If the Vendor elects to defend such claim, it may use such counsel as it so chooses, and the MnCCC shall have no duty to participate in such defense other than to make the

services of its directors, officers and employees available for the purpose of supplying information, records and testimony. However, the Vendor will be responsible for reimbursing the other party's reasonable out-of-pocket expenses incurred. Where the Vendor has elected to defend any such claim, it will be solely liable for all fees and costs of defense counsel for such claims. The Vendor will not be liable for any settlement of any claim described above which settlement is effected without its prior written consent, which consent, will not be unreasonably withheld; provided that if the Vendor does not assume the defense or prosecution of a claim as provided above within 30 days of notice, the MnCCC may settle such claim without the Vendor's consent, with the Vendor thereafter being subrogated to all rights and remedies of the MnCCC, except to the extent they apply against the Vendor.

Dispute Resolution

Purpose

Parties often find it helpful to provide a specific set of procedures and deadlines for the resolution of Contract disputes before litigation can be commenced. Requiring notification and an initial meeting of decision makers can often avoid litigation, or at least foster partial solutions or compromises. Without such a clause, some vendors with superior resources might use litigation as a threat or tool to renegotiate contracts, pricing etc. A typical pre-litigation dispute resolution clause requires direct negotiation by decision makers, and followed by non-binding mediation, where a skilled mediator tries to resolve or make progress on open areas before litigation can be filed by either party. The sample development agreement also includes a voluntary arbitration clause, which might be useful in situations where both parties agree to use this method, which will hopefully obtain a faster (and frequently a more cost-effective) decision, in cases where courts are significantly backlogged.

Language

- x.1** *In case of any dispute under this Contract, MnCCC and Vendor shall promptly meet and use good faith and use commercially reasonable efforts to resolve the dispute within [x] days of the initial dispute notice. If they cannot resolve the dispute by their own efforts, they shall select an independent, qualified mediator within the State of Minnesota to assist them in resolving the dispute. If they cannot agree on a mediator, either party may petition the District Court of Ramsey County, Minnesota to appoint a mediator. The parties to the mediation shall share the costs of the mediator equally. If the parties cannot resolve the dispute with the assistance of a mediator, either party shall thereafter be free to pursue its available legal remedies in those courts identified in this Contract.*

Termination Rights and Remedies

Purpose

In order to provide an exit strategy for failing projects, mitigate MnCCC's damages and provide specific exit and transition expectations and remedies, all Contracts should define specific grounds for termination, including MnCCC's right to terminate for convenience (e.g. no default or cause required, as long as the specified minimum prior written notice was given); whether or not such defaults are curable; cure remedies and specific standards for curable breaches; a declaration that termination preserves all applicable legal rights and remedies; and the expectations of MnCCC and obligations of the Vendor during the post-termination transition to a new service provider.

Language

- x.1 Termination for Insolvency. MnCCC may, upon service of Notice of Termination on Vendor, terminate this Contract immediately in the event of the insolvency of Vendor. Vendor shall be deemed to be insolvent if:
- a. Vendor has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition for bankruptcy has been filed, and whether or not insolvent within the meaning of the Federal Bankruptcy Law; or
 - b. a voluntary petition to have Vendor declared bankrupt has been filed; or
 - c. a Receiver or Trustee for Vendor has been appointed; or
 - d. Vendor has executed a general assignment for the benefit of creditors.
- x.2 Termination for Nonperformance. MnCCC may terminate all or any part of this Contract following service of written Notice of Termination on Vendor for nonperformance of this Contract under the following circumstances:
- a. Vendor fails to perform any of the provisions of this Contract; or
 - b. Vendor fails to perform installation of the software or equipment or fails to perform services under this Contract within the time specified in this Contract (or as specified in any authorized extension thereof); or
 - c. Vendor so fails to make progress as to endanger performance of this Contract in accordance with this Contract's terms; and Vendor does not cure such failure(s) within a period of fifteen (15) days (or such longer period as MnCCC may authorize in writing) after receipt of Notice of Termination from MnCCC.
- x.3 Termination for Convenience. MnCCC reserves the rights in its sole discretion to terminate this Contract and/or any individual Statement of Work for any reason or no reason and for its convenience, by providing at least 120 days' prior written notice of its exercise of this right.
- x.4 Post-Termination Transition. After Vendor receives a Notice of Termination, except as otherwise directed by MnCCC and/or agreed to in writing by the parties, Vendor shall:
- a. Stop work under this Contract on the date and to the extent specified in the Notice of Termination; and

- b. *Reconfirm and document the transfer of title, and deliver to MnCCC all completed work and work in process; and*
- c. *Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and*
- d. *Vendor shall submit to MnCCC, in the form and with any certifications as may be prescribed by MnCCC, its proposed final invoice. Such invoice shall be submitted promptly, but in no event later than three (3) months from the date of termination specified in the Notice of Termination. Said final invoice is subject to provisions 6 and 7 of this Contract.*
- e. *In the event Vendor fails to submit its final invoice, MnCCC may determine, based upon the information available to MnCCC, the amount, if any, due to Vendor and such determination shall be final.*

No exercise of any termination right (or expiration of this Contract) shall waive, release or limit any rights or remedies available under this Contract or under applicable law, and this Section is intended to and shall survive Contract termination and/or expiration.

Compliance with Laws; Governing Law; Jurisdiction and Venue

Purpose

This clause requires the Vendor to abide by all laws and regulations now in effect, or adopted later. This clause also clarifies that the internal laws of Minnesota will prevail, regardless of where the Vendor is located and/or Services provided.

Language

- x.1** *Vendor shall abide by all Federal, State or local laws, statutes, ordinances, rules and regulations now in effect, or hereafter adopted, pertaining to this Contract or the subject matter hereof. This shall include obtaining all licenses, permits or other rights required for the provision of Services contemplated by this Contract. This Contract shall be governed by and construed in accordance with the internal substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Contract, to be commenced by Vendor shall be venued in the applicable federal or state courts located in Ramsey County, Minnesota, and Vendor hereby irrevocably consents to the jurisdiction and venue of such courts.*

Severability

Purpose

The severability clause defines the agreed-upon legal consequences on a finding of invalidity or unenforceability. The goal of the severability clause is usually to maintain the spirit and enforceability of the Contract as much as possible.

Language

- x.1 *The provisions of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract, unless the part or parts which are void, invalid or otherwise unenforceable shall substantial impair the value of the entire Contract with respect to either party.*

Statement of Work

A Statement of Work (SOW) is a formal document that is typically referenced and used in a master services agreement, in order to capture and define the agreed-upon specific work activities, deliverables and timeline a Vendor will honor in performance of specified projects. Detailed specifications and other essential material project requirements and pricing are usually included in the SOW, along with standard regulatory and governance terms and conditions.

A Statement of Work should typically address the following areas:

1. Scope of Work. This describes the work to be done in detail and specifies the hardware and software involved and the exact nature of the work to be done. A project overview, project goals and objectives, critical success factors, and assumptions and constraints should be defined with reasonable specificity.
2. Location of Work. This describes where the work is to be performed. This also specifies the location of any required hardware/software, and where people will meet to perform the work.
3. Roles and Responsibilities. A complete list of key project team Members and stakeholders should be included, including title and role(s) they will perform on the project. Including a RACI (Responsible, Accountable, Consulted, and Informed) matrix is also recommended, as is a procedure to name and replace each party's project manager, and to specify if and to what extent such manager has decision-making authority.
4. Period of Performance. This specifies the allowable time for projects, such as start and finish time, number of hours that can be billed per week or month, where work is to be performed and anything else that relates to scheduling.
5. Deliverables Schedule. This part lists the specific deliverables, describing what is due and when.

6. Applicable Standards. This describes any industry or MnCCC specific standards that need to be adhered to in fulfilling the contract.
7. Change Control Procedures. This describes the detailed procedures on how the Change Control process will be managed and controlled.
8. Acceptance Criteria. This specifies how the buyer or receiver of goods will determine if the product or service is acceptable, what criteria will be used to state the work is acceptable.
9. Special Requirements. This specifies any special hardware or software, specialized workforce requirements, such as degrees or certifications for personnel, travel requirements, and anything else not covered in the contract specifics.
10. Type of Contract/Payment Schedule. The project acceptance will depend on if the budget available will be enough to cover the work required. Therefore payments breakdown whether up front or phased will be negotiated very early at this stage. Project costs and professional services fees should be included. Milestones should be specified here, along with the payments to be made on successful completion and acceptance of Milestone deliverables.
11. Detailed Revision History. This documents any and all modification to the SOW over time, complete with written acceptance from both MnCCC and the Vendor.
12. Signature Page. A formal acceptance page signed by both MnCCC and the Vendor to acknowledge acceptance of the Statement of Work.
13. Miscellaneous. There are many items that do not form part of the main negotiations but are none the less very important to the project. They seem minor but being overlooked or forgotten could pose problems for the project. Any additional material Terms and Conditions should also be memorialized in the Statement of Work.

Patch Management, System Updates, and Version Control

Purpose

This clause covers all servers, operating systems (OS), workstations, network devices, applications, and other information resources for which Vendors provide system patches or security updates.

Language

- x.1 *Vendor shall provide annually, or as otherwise requested, a report identifying Members utilizing the software and what version(s) of applications and patches have been installed at that location. Vendor shall use a version control system for the software, which must be approved by MnCCC and capable of providing documentation of all changes from one version to each subsequent version. Vendor shall work with MnCCC to determine the minimum version that will be supported by Vendor.*
- x.2 *Maintained patch levels are critical to the security of MnCCC Member systems. Vendors typically provide expedited patches and fixes for security problems, which can be*

loaded separately from the application. These should be loaded on a regular basis using a documented, coordinated process. Each patch or fix must include detailed documentation outlining what the patch or fix is repairing or enhancing, along with the specific Vendor testing process to insure that the risk of adverse effects on the system and data have been properly tested for, and mitigated.

- a. A patch management program that includes detailed procedures and standards will be developed and implemented by the Vendor with MnCCC's prior approval.*
- b. During regular operation, available patches will be reviewed monthly and applied if appropriate. In an emergency situation (such as an ongoing security incident), more urgent application of new security patches may be required.*
- c. Patches will be checked for compatibility with all system components prior to being applied.*
- d. Patches will be successfully tested on non-production systems prior to being loaded on production systems.*
- e. Patching should be performed during an authorized outage window unless there is an urgent situation.*
- f. Systems will be backed up prior to installation of new patches.*
- g. All systems that are a part of the network infrastructure will have a log book. System log books help record the status of network equipment and provide continuity among administrators. The log book may be in paper or electronic form. Information to be recorded includes: date of the action, administrator's name, patches and patch numbers that were installed, problems encountered, and system administrator remarks.*
- h. In the event that a system must be reloaded, all relevant data on the current OS and patch level will be recorded. The system should be brought back to the patch levels in effect before reloading.*

- x.3** *Violation of this Vendor policy could result in loss or limitations on use of information resources, as well as disciplinary and/or legal action, including termination of Contract or referral for criminal prosecution.*

Confidentiality

Purpose

In order to minimize third party unauthorized access and other security issues, as well as to maintain and preserve the commercial value of original, copyrightable software and related work product to be created and/or modified by Vendors, all Contracts should require Vendors, Subcontractors and all other third parties to maintain the confidentiality of the software or other deliverables, as well as any confidential information of MnCCC, its Members and Licensees

Language

- x.1** *Vendor agrees to ensure confidentiality of all services and work product performed and provided pursuant to this Contract, including source code development and all documentation or other deliverable information pertaining to the system design.*

Vendor agrees to protect the security of and to keep confidential all procedures and software created pursuant to this Contract, or modifications made to existing software to meet the specifications herein, all other data and information received or produced under the provisions of this Contract from MnCCC, its Members or licensors, and shall not disclose them or make any outside use of such data and information.

Vendor also agrees that it shall not disclose to any third party not providing services under this Contract any information identifying, characterizing, or relating to any risk, threat, vulnerability, weakness or problem regarding data security in users' computer systems, or to any safeguard, countermeasure, contingency plan, policy or procedure for data security contemplated or implemented by MnCCC and/or MnCCC Members, without their prior express written authorization. The provisions of this Section shall survive expiration or termination of this Contract.

Service Level Agreements

All Service and Maintenance types of contracts must contain some type of Service Level Agreement (SLA) for post-delivery and post-warranty support and maintenance services, with requirements and specifications directly tied to the operational units of the software and hardware. These agreements are best negotiated in tandem with development Contracts, so the true long-term costs can be assessed and managed. An SLA is generally an Exhibit referenced in, and attached to, the Contract.

Some areas to cover are:

- a. When a call for service is placed what type and in what timeframe is a responses required?
- b. Are there critical times? If so is a faster priority response needed during these critical times?
- c. How are requests for enhancements handled? Timely responses?
- d. Bug fixes, timelines for rectification?
- e. If hosted, down times, scheduled and unscheduled.
- f. Vendor responses to required changes driven by law changes.
- g. Helpdesk, what is the expectation for availability and what will they cover, tier1, tier2, etc., how is the escalation handled?
- h. Can anyone place a request for service or help desk call, or is it filtered locally first?
- i. What happens when the agreed upon requirements are not met? Is there a % held back or other equitable adjustment or credit, does it reduce the next years support costs?
- j. How and what type of training and expertise is the Vendor going to expect and require of the end user (us)?

- k. What happens when the customer (us) fails to meet these requirements?

Severity Levels, Prioritization, and Response Time Requirements

Purpose

Each support request will be logged into Vendor's support tracking system and assigned a unique tracking number.

New Support Requests will be given a label regarding Severity:

Severity 1: Critical Business Impact – xxxx system is not accessible

Severity 2: Significant Business Impact – An xxxx component is unavailable to users

Severity 3: Some Business Impact - xxxx system is fully available, but a significant issue is causing delays or workarounds

Severity 4: Minimal Business Impact - xxxxx system is fully available, but minor issue requires assistance

- Highest priority will be given to Severity 1 issues, with Severity 2, 3, and 4 in descending priority sequence.
- End user will assign severity; Vendor can adjust severity label with MnCCC approval.

Language

Response Time Goals:

Severity 1 – *Within 1 hour for initial response, with all available Vendor resources to support until xxxxx system is up and running again. Vendor resources will work 7 days a week, 24 hours a day until the issue is solved. Vendor will provide regular updates to the client personnel on the status and resolution of the issue. MnCCC and the affected Member contract personnel shall be notified if the issue is not resolved in 4 hours. The notification shall include an expected time to resolution. This update shall occur every 4 hours until the issue is resolved.*

Severity 2 – *Within 2 hours for initial response, subject to Severity 1 priorities, with all available resources to support issue resolution until the issue is resolved. Regular updates (at least at every 20 hour work interval) will be provided by Vendor to MnCCC designated contact(s). Escalation to designated MnCCC and Member personnel is required after 20 working hours if the issue has not been resolved. Vendor will work on these issues during normal business hours.*

Severity 3 – *Within 4 hours for initial response, subject to Severity 1 and 2 priorities. Regular updates (at least at every 40 hour work interval) will be provided by Vendor to designated MnCCC contact(s)/staff. Escalation is required after 60 working hours if the issue has not been resolved. Vendor will work on these issues during normal business hours.*

Severity 4 – *within 8 hours for initial response, subject to Severity 1, 2 and 3 priorities. Vendor will work on during normal business hours. These issues are expected to be resolved within a commercially reasonable time. No escalation of these type of issues is required unless the issue*

has not been resolved within 3 months. After 3 months escalation of the issue must be made to MnCCC, and the affected Member license designated staff.

Hours of Service

Vendor Support for XXXXX will be staffed and available from 8:00 A.M. to 4:30 P.M. Central Time, Monday through Friday, excluding Vendor holidays.

Boundaries of Service

The focus of Vendor's support is the XXXXX application and while many other factors can affect the availability and performance of XXXXX, Vendor will engage and assist in problem determination until an acceptable resolution is reached. Issues not covered by XXXXX support may include:

- *Internal county/agency IT responsible systems*
- *Another vendor/application support not related to XXXXX*
- *xxxx core operating systems, except as related to xxxxx standard updates that XXXXX must operate under/or with.*
- *Microsoft core operating systems, except as related to Microsoft standard updates that XXXXX must operate under/or with.*
- *Billable services from Vendor (for a project outside of XXXXX Support Agreement)*

Examples of services not covered under the XXXXX Support Agreement:

- *3rd party software fees or support unless the 3rd party software is part of the XXXXX application.*
- *Server migrations and server setup.*
- *Operating System updates or troubleshooting (IBM or Windows servers), except as related to Microsoft or IBM standard updates that XXXXX must operate under / or with.*
- *Applying OS updates to application and/or web server updates.*
- *Networking issues internal to county or agency.*
- *PC issues or PC troubleshooting, except as related to Microsoft or IBM standard updates that XXXXX must operate under / or with.*
- *Remote connection issues.*
- *Issues controlled by State of MN.*
- *Issues caused or initiated by Member county/agency that impact XXXXX that require Vendor assistance to resolve (i.e. user error - approving budget prematurely and needing to manually "fix" data).*
- *Support for non-XXXXX applications or county systems.*
- *Future 3rd party fees (if any) for what is currently "freeware" embedded within XXXXX (i.e. Crystal Reports viewer, xls converter, PDF viewer, etc.) These must be identified ASAP and a written report supplied to MnCCC within 90 days of contract signing.*

Customer Responsibilities

- *XXXXX Users will support their own requests for support with timely communication during and after problem resolution.*
- *XXXXX users will provide a high-speed remote access capability to Vendor, as needed, to help resolve support issues. Vendor agrees to follow the individual Member's agency / county requirements for this connectivity.*
- *XXXXX users will work with their local IT staff to rule out local issues before contacting Vendor.*
- *XXXXX users are encouraged to consult the Vendor IFS Portal and/or IFS Golden for additional help information.*
- *Users need to supply as much detail of the issue to the Vendor help desk as possible. Examples of information needed is:*
- *Knowing if they are running IE in compatibility mode, and what IE version they are on.*
- *Knowing if the issue is isolated or happening multiple time and to different XXXXX users.*
- *If the problem can readily be recreated, knowing the specific steps that cause the issue.*
- *Knowing if any changes have occurred in the local system/network environment (new levels of operating system, or hardware, or web server, etc.).*
- *If any local diagnostics were run, being able to share them with Vendor.*
- *Sharing screen shots of issue, or error code.*

Reporting

- *Vendor will provide MnCCC approved reports to MnCCC concerning the following aspects of XXXXX Support, these reports shall be supplied bi-monthly or on a schedule mutually agreed to by MnCCC, and Vendor*
- *Volume of Support Issues (new vs. resolved).*
- *Resolution Type for Support Issues.*
- *Volume of Issues by reporting agencies.*
- *Trends in support.*
- *Severity 1, 2, 3, 4 issues reported/resolved.*
- *"Bugs" fixed/pending.*
- *Enhancements completed/pending.*
- *Modernization activities status and hours usage.*