

REGENTS OF THE  
UNIVERSITY OF MINNESOTA

Center for Transportation Studies

REQUEST FOR INFORMATION ("RFI") #1023  
FOR

Development and Delivery of Technical Assistance Materials

Submit responses to this Request for Information ("RFI") in a sealed envelope or package with the Respondent's name and address, RFI number and RFI title clearly marked on the outside of each sealed envelope or package.

**MAIL OR DELIVER one signed ORIGINAL and 1 paper copies for Review Team of your response to:**

Center for Transportation Studies  
Attention: Penny Harris  
200 Transportation and Safety Building  
511 Washington Ave. S.E.  
Minneapolis, MN 55455

**Do not submit copies to any other person or location.**

**SUBMITTAL DATE AND TIME**

**PLEASE SUBMIT RESPONSES BY:**

**CTS will begin to review responses to the RFI on:**  
**October 5, 2009** 4 PM Minnesota time  
(Central time zone)  
per the clock in CTS  
Main Office

It is in the best interest of all contractors to submit the required information by the initial submission date in order to be eligible for upcoming contracts. Additional information responses will be accepted through the final submission deadline below.

**The final submission deadline for this RFI is:**  
**October 5, 2011** 4 PM Minnesota time  
(Central time zone)  
per the clock in CTS  
Main Office

**CONTACT FOR RFI INQUIRIES**

**For questions about the description of services, contact:**

Jan Lucke  
Program Coordinator  
Center for Transportation Studies  
200 Transportation and Safety Building  
511 Washington Ave. S.E.  
Minneapolis, MN 55455  
Phone: (612) 625-8401  
Fax: (612) 625-6381  
Email: jlucke@cts.umn.edu

**For administrative questions, contact:**

Penny Harris  
Contract Coordinator  
Center for Transportation Studies  
200 Transportation and Safety Building  
511 Washington Ave. S.E.  
Minneapolis, MN 55455  
Phone: (612) 625-9246  
Fax: (612) 625-6381  
Email: harri163@cts.umn.edu

The person designated above shall be the only contact for all inquiries regarding any aspect of this Request for Information (RFI) and its requirements. DO NOT CONTACT ANY OTHER UNIVERSITY EMPLOYEE, REPRESENTATIVE, OR STUDENT REGARDING THIS RFI UNLESS SPECIFICALLY INDICATED OTHERWISE IN THIS RFI OR INSTRUCTED TO DO SO IN WRITING BY THE PERSON DESIGNATED ABOVE.

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**1.0 OVERVIEW OF THE RFI PROCESS AND GENERAL INSTRUCTIONS TO RESPONDENTS**

Carefully read the information contained in this RFI and submit a complete response to all requirements, specifications, and questions as directed.

**1.1 QUESTIONS AND INQUIRIES**

Respondents who have questions about the RFI should fax or e-mail such questions to the Contact for RFI Inquiries by the date noted in the Tentative Schedule of Events.

Responses to written questions which involve an interpretation or change to this RFI will be issued in writing by addendum and mailed to all parties recorded by the University as having received a copy of the RFI. All such addenda issued by the Center for Transportation Studies prior to the time that responses to RFI are received shall be considered part of the RFI.

Companies receiving this request other than directly from the Center for Transportation Studies are responsible for notifying the Contact for RFI Inquiries that they are in receipt of an RFI package and for providing a name, address and e-mail in the event an addendum is issued.

Only additional information provided by formal written addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect.

**1.2 TENTATIVE SCHEDULE OF EVENTS**

Be advised that these dates are subject to change as University deems necessary.

	DATE
RFI issued.....	<b>September 21, 2009</b>
Questions Mailed/Faxed to the Center for Transportation Studies.....	<b>September 28, 2009</b>
CTS will Begin to Review Responses on .....	<b>October 5, 2009</b>
Final Submission Due Date.....	<b>October 5, 2011</b>

**PLEASE NOTE THAT NOTHING IN THIS RFI SHALL BE CONSTRUED TO REQUIRE THE UNIVERSITY TO ISSUE AN RFP. BY SUBMITTING A RFI RESPONSE, RESPONDENT ACKNOWLEDGES THAT THE UNIVERSITY'S RFI IS SIMPLY A REQUEST FOR INFORMATION AND NOT A REQUEST FOR PROPOSAL AND THAT THE UNIVERSITY MAY OR MAY NOT ISSUE AN RFP FOR THE PRODUCT OR SERVICE DESCRIBED IN THIS RFI.**

**1.3 ISSUANCE OF RFI**

A Request for Information (RFI) is NOT a request for proposal, bid, or quotation. No award will be issued from this RFI. The RFI is intended to gather information regarding the service described in Attachment B. If prices are requested, it is for general information purposes only and does not constitute a bid.

**1.4 RESPONSE SUBMISSION**

**1.4.1 NUMBER AND DESCRIPTION OF ORIGINAL AND COPIES**

Mail or deliver the number of response sets specified on the Title Page to designated area. All documents should be 8 1/2" x 11". The copies should be bound in a manner that facilitates easy handling and reading by the review committee. The original and the copies must read exactly the same.

Include with the response a table of contents that includes page number references. The table of contents should be in sufficient detail to facilitate easy reference to the sections of the response as well as separate supplemental information.

**1.4.2 LATE SUBMISSION**

Responses received by the University after the Final Submittal Date and Time indicated on the Title Page may not be considered. The Respondent assumes the risk of the method of dispatch chosen. Postmarking by the Submittal Date and Time shall not substitute for actual response receipt.

**1.5 OWNERSHIP OF RESPONSE TO RFI**

All materials submitted in response to this request become the property of the University and may become part of any resulting contract.

**1.6 RELEASE OF CLAIMS, LIABILITY AND PREPARATION EXPENSES**

Under no circumstances shall the University be responsible for any response preparation expenses, submission costs, or any other expenses, costs or damages, of whatever nature incurred as a result of Respondent's participation in this RFI process. Respondent understands and agrees that it submits its response at its own risk and expense and releases the University from any claim for damages or other liability arising out of the RFI process, except to the extent of the University's willful or wanton acts in connection therewith.

**1.7 PUBLIC RESPONSE TO RFI OPENING AND VIEWING**

The University will open the responses on the Submittal Date indicated. Only the names of the Respondents shall be made public at the opening. If the University issues a subsequent RFP, then the RFI responses may be viewed publically in Purchasing Services AFTER an award is made pursuant to the RFP. If a decision is made not to issue an RFP, the RFI folder will be closed and the responses will be made public. Public reviews are subject to the University's Records & Information Management policies and procedures.

**1.8 ERRORS IN RESPONSE**

The University shall not be liable for any errors in Respondent's response. Respondent is responsible for careful review of its entire response to ensure that all information is correct and complete. Respondents are liable for all errors or omissions contained in their responses.

**1.9 ADDENDUM**

The University reserves the right to issue an addendum to the RFI at any time for any reason.

**1.10 RESPONSES SUBJECT TO PUBLIC DISCLOSURE**

University considers all information, documentation and other materials (collectively, "Materials" or "Items") submitted in response to this RFI to be of a non-confidential and/or non-proprietary nature and therefore shall be subject to public disclosure in accordance with Section 1.8. By submitting a response, Respondent agrees to release the University from any liability resulting from University's disclosure of such information.

If submitting information in response to this RFI that you believe to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota-Statute. Section 13.37 ("MGDPA"), follow these instructions.

- (1) Clearly and conspicuously mark any Materials you believe to contain trade secret information.
- (2) Enclose such Materials in a separate envelope, which, itself, is clearly and conspicuously marked "Confidential."
- (3) Include in the envelope an attorney's opinion for each Item indicating the legal basis for regarding it as trade secret under the MGDPA.

Respondent also agrees to defend any action seeking release of the Materials believed to be trade secret, and indemnify and hold harmless the University, its regents, agents and employees, from any judgments or damages awarded against the University in favor of the party requesting the Materials and any and all costs connected with that defense. Additionally, Respondent understands and agrees that in the event a request is made under the MGDPA, the University will notify Respondent of such request but under no circumstances shall the University be required to commence or defend any action to prevent the disclosure of any Materials, including Materials which the Respondent believes to be trade secret or confidential.

**1.11 TESTING AND SAMPLES**

The University may request a demonstration of or may request a test of any or all products or services described in identified in the RFI response(s). If not destroyed by testing, and if practical, samples may be returned at the Respondent's request and expense following evaluation or after an RFP is awarded. Do not submit unsolicited samples.

**1.12 PURPOSE OF REQUEST FOR INFORMATION**

The purpose of this RFI is to gather information about the qualifications of contractors who perform graphic design services for print and/or electronic publications, since the Center for Transportation Studies may need to purchase these services in the future. Responses are being sought from contractors who can demonstrate the qualifications described in Attachment B.

**1.13 WITHDRAWING RFI RESPONSE**

Respondents may withdraw their response at any time by submitting a written request to the Contact for RFI Inquiries indicated on the Title Page. The written request must be signed by an authorized representative of the Respondent. The Respondent may submit another response at any time prior to the Final Submittal Date and Time.

**1.14 RESPONSIBLE RESPONDENTS**

The University reserves the right to award contracts only to responsible contractors. Responsible contractors are defined as individuals or companies that demonstrate the financial ability, resources, skills, capability, willingness, and business integrity necessary to perform on the contract. The University's determination of whether a Respondent is a responsible contractor is at the University's sole discretion.

**1.15 NOTIFICATION OF AWARD**

If the University awards a contract as a result of this RFI process, the University will deliver to the selected Respondent a University of Minnesota Contract for Professional Services.

The resulting contract shall consist of:

- (1) the terms, conditions, specifications and requirements of the Contract for Professional Services,
- (2) a detailed work plan, including scope of work, budget, and schedule for the specific project assignment.

## **2.0 REQUEST SUMMARY**

### **DESCRIPTION OF SERVICES**

This RFI is issued by the Center for Transportation Studies at the University of Minnesota to provide professional Development and Delivery of Technical Assistance Material for a variety of deliverable work products.

The primary responsibility of the Contractor will be to translate pertinent published material into a format appropriate to the desired training program. Deliverables may include course curriculums, participant manuals or handouts, visual aids, training manuals, and training videos. The format may be paper, electronic or video.

Contractors may also be utilized as instructors to present the material, normally in a classroom or field setting. The contractor(s) would work with one of the CTS staff members, who would serve as project manager.

Potential assignments include the following:

- Develop and deliver technical assistance and training materials, training classes, short courses, demonstrations, manuals, videos, CD's and informational sessions, to support CTS program directions. In addition to the development and delivery of technical assistance materials, technical summaries of training activities could be developed.
- Provide consultation on the translation of technical information into concise information formats highlighting new technologies and applications; provide program publication writing support.
- The Contractor may be responsible for researching and writing content material – usually technical or policy oriented – to create interesting, readable documents, manuals and/or Web pages.
- The Contractor may need to work collaboratively with the CTS Publication team (editors, graphic designers) and possibly with other vendors/providers such as printers and Web programmers.

### **REQUIRED QUALIFICATIONS**

- **Qualifications of project personnel**  
The Contractor should identify the names and titles of key project personnel who could be working on potential projects. Specifically, discuss the experiences and expertise of each team member and what each could do for MN LTAP/CTS projects. Strong consideration will be given to those contractors with professional engineer registration in civil engineering, experience in transportation technology transfer activities, training coordination, and strong familiarity with Minnesota state or local government transportation organizations. Personnel who have developed and instructed educational programs, instructed classes, and created videos and web-based resources are desired as project team members. The Contractor should highlight any inter-disciplinary team approaches to delivery of projects. A resume or summary of each project team member including past experience on similar projects, should be included as an Appendix.
- **Range of skills and abilities available from the Contractor**  
Contractor's ability to develop and/or deliver various types of training materials should be documented. If the contractor has experience in developing material other than training materials, which demonstrate similar abilities and skills, this should also be described. The Contractor must be able to perform work to a high level of professional expertise, must be capable of designing course curriculum and instructing courses in an engaging and participative manner. In addition, strong writing skills are required for course participant materials, technical information and web-based resources. Therefore, strong oral and written communication skills are essential. Graphic layout and design skills for web resources and course material are desirable.
- **Related experience**  
The response should describe at least three (3) similar projects on which the Contractor has performed services, using similar skills and abilities. Projects of particular interest include projects where educational and technical assistance materials were prepared.

**RESPONDENT PROFILE AND EXECUTIVE SUMMARY**

**Company Profile** – Attach additional pages if necessary.

1. Legal name of the Respondent: \_\_\_\_\_
2. Address of office which will fulfill this contract: \_\_\_\_\_
3. Number of years in business related to RFI: \_\_\_\_\_
4. Type of Operation: Individual: \_\_\_\_ Partnership: \_\_\_\_ Corporation: \_\_\_\_ Government: \_\_\_\_
5. Company-wide Annual Sales Volume: \_\_\_\_\_
6. Does any current relationship whether a relative, business associate, capital funding agreement or any other such kinship, exist between Respondent and any University employee?  Yes  No If yes, please explain relationship.  
\_\_\_\_\_  
\_\_\_\_\_
7. Number of employees qualified to perform the services described in this RFI: \_\_\_\_\_
8. Is Respondent currently for sale or involved in any transaction to expand or to become acquired by another business entity?  Yes  No  
If yes, please explain the impact both in organizational and directional terms.  
\_\_\_\_\_  
\_\_\_\_\_
9. Provide any details of all past or pending litigation or claims filed against Respondent that would affect Respondent's performance under a contract with the University.  
\_\_\_\_\_  
\_\_\_\_\_
10. Is Respondent currently in default on any loan agreement or financing agreement with any bank, financial institute, or other entity?  Yes  No  
If yes, specify date(s), details, circumstances, and prospects for resolution.  
\_\_\_\_\_  
\_\_\_\_\_
11. Are there any circumstances impacting Respondent that could affect Respondent's ability to perform under any award made through RFI process.?  Yes  No  
If yes, please specify.  
\_\_\_\_\_  
\_\_\_\_\_

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**PRICING FOR SERVICES**

**PRICING FOR SERVICES**

All costs must be stated in this section. No unstated costs will be allowed.

State Cost of Service at per hour rate: \$\_\_\_\_\_

If multiple employees from a single firm are included in the proposal, provide the cost of service at per hour rates for each employee.

Please note, rate increases will be evaluated on a case-by-case basis. Additionally, if the rate increase exceeds a reasonable cost of living increase, the University may require withdrawal of the original response and submittal of a revised response with the new pricing structure along with an update on the qualifications including any new skills, accomplishments, goals, and awards.

**REFERENCES**

Provide a customer reference list of no fewer than three (3) organizations with whom Respondent currently has contracts and/or has previously provided similar goods and/or services within the past five (5) years. Reference list is to include company name, contact person, telephone number and e-mail address, and summary of work performed.

ATTACHMENT E

**Sample of Current University TERMS AND CONDITIONS for Contracts for Professional Services\***

THIS AGREEMENT is entered into by and between the Regents of the University of Minnesota, a Minnesota Constitutional corporation, through its (the "University") and <<TO BE DETERMINED>> (the "Contractor").

The University and Contractor agree as follows:

1. **Term of Agreement.** This Agreement is effective on the date indicated on the cover sheet in which these terms and conditions are referenced ("Cover Sheet") and shall remain in effect until the date indicated on the Cover Sheet, or until all obligations set forth in this Agreement have been satisfactorily fulfilled, or the Agreement has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Agreement intended for University's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Agreement. **CONTRACTOR UNDERSTANDS THAT NO WORK SHOULD BEGIN UNDER THIS AGREEMENT UNTIL ALL REQUIRED SIGNATURES ON THIS AGREEMENT HAVE BEEN OBTAINED. ANY WORK PERFORMED BY CONTRACTOR PRIOR TO SUCH TIME SHALL BE CONSIDERED AS HAVING BEEN PERFORMED AT CONTRACTOR'S OWN RISK AND AS A VOLUNTEER.**

2. **Scope of Work.** Contractor shall perform all of the services set forth in the Cover Sheet and any exhibits attached thereto ("Scope of Work"). Contractor understands that time is of the essence in this Agreement and agrees to meet all milestones indicated on the Cover Sheet and any exhibits attached thereto.

3. **Consideration and Terms of Payment.** The consideration for all services (and goods if any) performed or supplied by Contractor under this Agreement shall be paid by University as follows:

3.1. **Total Obligation.** University's total obligation to Contractor under this Agreement, including compensation for goods, services, and reimbursable expenses, shall not exceed the amount indicated on the Cover Sheet without the prior written approval of University.

If expenses are reimbursable, each request for reimbursement must be itemized and accompanied by receipts. Requests for travel and subsistence expenses must be consistent with University's travel policy, a copy of which may be obtained from University's Purchasing Services, and clearly indicate prudent use of public funds.

3.2. **Frequency of Invoicing and Terms of Payment.** Contractor shall submit invoices upon completion of the milestones described in Exhibit A, or as may otherwise be provided in Exhibit A. University shall pay such invoices consistent with Section 4.8. (Terms of Payment).

4. **General Terms and Conditions.** The terms and conditions contained in this Agreement shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Agreement. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Agreement and its Exhibits, (2) University's RFP or RFI, and (3) Contractor's Response to University's RFP or RFI.

4.1. **Choice of Law, Forum Selection, Entire Agreement, and Amendment.** This Agreement shall be construed under Minnesota law (without regard for choice of law considerations) and the policies and procedures of University, as amended from time to time. Any action arising out of this Agreement shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Agreement constitutes the entire agreement and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. University shall not be bound by any amendment to this Agreement unless such amendment has been signed by University's Director of Purchasing Services.

4.2. **Warranty.** Contractor expressly warrants and guarantees that the services performed under this Agreement will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any) provided

\*Terms and Conditions may be updated at the University's discretion, at any time prior to the agreement's execution.

under this Agreement: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of University as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written advertisement, correspondence, response to University's RFP or RFI, or other document provided to or in the possession of University; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered by University and any other persons, and to defend, indemnify, and hold harmless University and its regents, faculty members, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by University.

**4.3. Inspections and Improper Delivery.** University shall have a reasonable time (but not less than thirty [30] days) after receipt to inspect and test any goods or services provided under this Agreement and reject any or all items that are, in University's sole judgment, nonconforming or defective. Goods or services rejected or supplies in excess of quantities ordered may be returned to Contractor at Contractor's expense. University also reserves the right to refuse any goods or services and to cancel all or any part of this Agreement if Contractor fails to deliver all or any part of the goods or services in accordance with the terms and conditions of this Agreement. Failure by University to inspect and test the goods or services shall not relieve Contractor of such responsibility. Any acceptance by University shall not be deemed a waiver or settlement of any defect or nonconformity in such goods or services. If University elects to accept nonconforming or defective goods or services, University, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate University for the nonconformity or defect.

**4.4. Assignment.** Contractor may not assign any obligations of this Agreement without the prior written consent of University. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Agreement. This Agreement shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement shall be void. Notwithstanding any notice of assignment, University's tender of payment to Contractor named herein, or to any person reasonably believed by University to be entitled to payment, shall satisfy University's obligation to pay, and in no event shall University be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

**4.5. Taxes.** University is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70 Subd 2(a). Contractor shall not charge University for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Agreement; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70 Subd 2(b)]. Contractor shall promptly reimburse University for any and all such sales and use taxes paid by University to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse University for any and all such sales and use taxes provided above.

University may be obligated by state and federal law to withhold state and federal taxes from the consideration stated in paragraph 3. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding. See Section 4.25 regarding Contractor's obligation to provide a valid TIN and certification as to whether federal backup withholding applies.

**4.6. Risk of Loss.** With respect to any goods provided under this Agreement, risk of loss shall not pass to University until such goods have been actually received and accepted by University, pursuant to Section 4.3 ("Inspections and Improper Delivery"), at the destination specified by University. Contractor assumes full responsibility for packing, crating, marking, transporting and liability for loss or damage in transit, notwithstanding any agreement by University to pay freight, express, or other transportation charges.

**4.7. Use of University Name or Logo.** Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with University or the name of any representative of University in any sales promotion work or advertising, or any form of publicity, without the written permission of University's Purchasing Services in each instance.

\*Terms and Conditions may be updated at the University's discretion, at any time prior to the agreement's execution.

**4.8. Terms of Payment.** Subject to the conditions below, payment shall be made by University within thirty (30) days upon Contractor's presentation of an invoice for goods delivered or services rendered pursuant to this Agreement. In the case of goods, however, payment shall not be due prior to thirty (30) days from the date the invoice is received by University at the address indicated in Section 4.24 or from the date the goods are delivered to the destination specified herein, whichever is later. University may withhold payment in whole or in part for goods or services found by University to be defective, untimely, unsatisfactory, or otherwise not conforming to this Agreement, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.

**4.9. Termination.** University may terminate this Agreement in whole or in part for its sole *Convenience*. Upon notice of such termination, Contractor shall immediately stop all work including shipment of goods under this Agreement and cause its suppliers and/or subcontractors to cease their work for this Agreement. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by University in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

University may terminate this Agreement in whole or in part for *Cause* upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Agreement, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Agreement. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Agreement shall, without limitation, be causes allowing University to terminate for cause. In this event, University will not be liable for any amounts; but Contractor shall be liable to University for all losses, damages, and expenses. including, without limitation, the excess cost of recouping similar goods or services; shipping charges for any items University may at its option return to Contractor, including items already delivered, but for which University no longer has any use because of Contractor's default; and amounts paid by University for any items University has received but returns to Contractor. If a determination is made that University improperly terminated this Agreement for Cause, then such termination shall be deemed to have been for University's Convenience.

**4.10 Independent Contractor.** CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OF UNIVERSITY. NEITHER CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF UNIVERSITY. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX ON ANY MONIES PAID PURSUANT TO THIS AGREEMENT. CONTRACTOR ACKNOWLEDGES THAT CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO TAX WITHHOLDING, WORKER'S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR ANY EMPLOYEE BENEFITS, STATUTORY OR OTHERWISE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND UNIVERSITY TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF CONTRACTOR, ITS EMPLOYEES, AND AGENTS.

**4.11. Non-Waiver.** No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

**4.12. Audit and Retention of Books and Records.** University shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Agreement. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. All such items shall be retained by Contractor during the term of this Agreement and for a period of three (3) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Agreement shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

**4.13. Limitation on University Liability.** IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT. UNIVERSITY'S MAXIMUM OBLIGATION UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT SET FORTH IN SECTION 3.1.

**4.14. Changes.** University may at any time by a written notice change the drawings, designs, specifications, materials, packaging, and the time and place of delivery and/or completion of the goods and services to be provided under this Agreement. Promptly upon receipt of the details of any such change. Contractor shall either advise that the change will not affect its costs, or furnish: (i) a breakdown of estimated cost and changes in the compensation attributable thereto, and (ii) a

\*Terms and Conditions may be updated at the University's discretion, at any time prior to the agreement's execution.

statement of any necessary changes in the time of completion. Contractor's failure to advise University in writing within ten (10) days of the effect of any change hereunder shall constitute Contractor's consent to conform to the change without increase in the amount to be paid by University or the time of completion or without change to other terms and conditions of this contract.

**4.15. University Information.** Contractor agrees that any information it receives during the course of its performance, which concerns the personal, financial, or other affairs of University, its regents, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13.

**4.16. Ownership of Works and Intellectual Property Rights.** The term "Works" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which are to be prepared for University and delivered under this Agreement. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by University. Contractor agrees that all copyrightable Works shall be considered a "work made for hire" and that University is the author of and owns all rights in and to the Works, and agrees that if the Works may not be considered a work made for hire under 17 U.S.C., Sections 101 and 201(b), Contractor shall without further compensation, assign all rights Contractor may have in the Works to University. Contractor waives any and all statutory moral rights in the Works which Contractor may have arising under 17 U.S.C. 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of moral right. Contractor shall, without further compensation, disclose information to University and execute such documents as may be reasonably necessary to assist University in securing and enforcing rights in the Works and related proprietary rights.

**4.17. Insurance.** Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance under this Agreement, Contractor shall obtain and keep in force comprehensive general and professional liability insurance, including coverage for death, bodily or personal injury, property damage, including liability and automobile coverages, with limits of not less than \$1,000,000 each claim and \$1,000,000 each occurrence. All such certificates evidencing such insurance shall name the Regents of University as an additional insured. Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor shall provide all such certificates to University prior to commencement of services or delivery of goods and shall reference the Contract for Professional Services Number listed on the front of this Agreement when providing such certificates.

**4.18. Indemnification.** Contractor agrees to release, defend, indemnify, and hold harmless University, its regents, faculty members, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties under Section 4.2. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of University.

**4.19. Anti-Kickback Enforcement Act of 1986.** This Agreement is subject to the provision of the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). By accepting this Agreement, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any University employee for the purpose of obtaining this or any other University Agreement; (ii) agrees to cooperate fully with any investigation involving a possible violation of the Act; and (iii) agrees to report any suspected violations of the Act to University's Director of Audits at (612) 625-1368. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of Minnesota Statute, Section 15.43.

**4.20. Affirmative Action, Equal Employment Opportunity, and Targeted Group Business.** University of Minnesota is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor will maintain non-segregated facilities for their employees and not allow their employees to perform services at any segregated facilities under its control. Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary

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of Labor. Additionally, this Agreement is subject to the requirements of and Contractor agrees to comply with (i) Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor (41 CFR Chapter 60) in promoting Equal Employment Opportunities; (ii) Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations of the Secretary of Labor (41 CFR Part 60-250) in promoting employment opportunities for disabled and Vietnam veterans; (iii) Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516, Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-47 1) in promoting affirmative action in Employment of the Handicapped; (iv) Public Law 95-507 in promoting the policy that small business concerns owned and controlled by socially and economically disadvantaged shall have maximum practicable opportunity to participate in University's Bidding process; and (v) Minnesota Statutes, Chapter 363 in promoting the equal rights and non-discrimination of persons based on race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status or sexual orientation. University's Targeted Group Business Policy and Affirmative Action Policy are incorporated into this Agreement by reference and Contractor agrees to comply with such policies. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Agreement, Contractor certifies that it complies with all applicable federal and state laws as well as University policies related to non-discrimination, equal employment opportunity, and affirmative action.

**4.21. Compliance with Laws and Debarment** Contractor certifies that all goods or services furnished under this Agreement shall comply with all applicable federal, state, and local laws and regulations, as well as University and Regents policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Agreement. Contractor certifies that no chlorofluorocarbon (CFC) processed products will be used in fulfilling this Agreement or in the packaging connected therewith, all as defined in Minn. Statute, Section 116.70. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal government. Contractor shall notify University if it becomes debarred or suspended during the term of this Agreement. University may immediately terminate this Agreement in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by University in connection therewith. If Contractor has been notified by University that the goods or services provided hereunder are being procured with federal funds, the federal requirements set forth in Exhibit B shall be incorporated into this Agreement and Contractor shall adhere to such additional requirements. If federal contract funds are not being used, Contractor will not receive Exhibit B.

**4.22. Anti-Trust Violations.** Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the buyer. Therefore, Contractor hereby assigns to University, as the buyer of goods and services under this Agreement, any and all claims for such overcharges as to goods and services purchased in connection with this Agreement.

**4.23. Rights of the Federal Government to Inventions Made Under a Contract or Agreement.** To the extent this Agreement involves the performance of experimental, developmental, or research work, the rights of the Federal Government and University to any resulting inventions shall be determined in accordance with 37 CFR part 401, "*Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,*" and any implementing regulations issued by the awarding agency.

**4.24. Notices/Administration.** Except as otherwise provided in this Agreement, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth in the Cover Sheet or to such other address as such party may designate by notice given pursuant to this section.

**4.25. Acknowledgement.** In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to University is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Agreement and perform its obligation under this Agreement. Contractor must cross out and initial item (2) and notify University in writing at Purchasing Services, 1300 South Second Street, Suite 560, Minneapolis, MN 55454-1082, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

Notwithstanding this certification, Contractor hereby acknowledges that University has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this agreement is executed.

**4.26. University Contract Number.** Contractor agrees to place University Contract Number indicated at the top of this document on any packages, invoices, packing slips, notices and correspondence related to this Agreement.

**4.27. Return of Data.** Within fifteen (15) days of the completion or earlier termination of this Agreement, or upon earlier request of University, Contractor shall return all documents, data and other information provided by University to Contractor, or Contractor's employees or agents in connection with this Agreement. Additionally, Contractor, upon the request of University, shall destroy all copies of such University provided data, documents, or information in Contractor's possession or control, and provide University with proof of such destruction.

**4.28. "Most Favored Customer" Provision.** If Contractor has negotiated terms or conditions for the sale of goods or services to another client of Contractor which University deems more favorable than those contained herein, University may request and shall be afforded the opportunity to purchase those goods or services on the same terms and conditions as Contractor has negotiated to provide a third party under reasonably similar circumstances.

**4.29. Cash Discount Period.** The cash discount or other similar prompt payment discount period available to University shall commence on the later of: (i) University's receipt of all goods and services under this Agreement, or (ii) University's receipt of Contractor's invoice.

**4.30. Fund Availability; Federal Funds Contingency.** Financial obligations of University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement is funded in whole or in part with federal funds, University's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

**4.31. Severability.** If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**4.32. Survivability.** The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

**4.33. Gramm-Leach-Bliley Security Compliance.** This Contract for Professional Services is subject to, and Contractor agrees to comply with, the provisions of the Gramm-Leach-Bliley Act. Throughout the term of this Contract for Professional Services, Contractor shall implement and maintain 'appropriate safeguards,' as that term is used in §314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314 (the 'FTC Rule'), for all 'customer information,' as that term is defined in §314.2(b) of the FTC Safeguard Rule, owned by University and delivered to Contractor pursuant to this Contract for Professional Services. Contractor shall assist and cooperate in University's efforts to ensure and confirm Contractor's compliance with the terms of this section, including, without limitation: (i) permitting employees or representatives of University to inspect on Contractor's premises Contractor's business records, procedures, rules and practices pertinent to the aforementioned 'safeguards'; and (ii) making available to such employees or representatives of University employees or representatives of Contractor's who have authority to maintain or are knowledgeable of such 'safeguards'. Contractors shall promptly notify University in writing, of each instance of: (i) unauthorized access to or user of that customer information that could result in substantial harm or inconvenience to a customer of University, or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of that customer information. Within thirty (30) days of the termination or expiration of this Contract for Professional Services, Contractor shall destroy and shall cause each of its agents to destroy all records, electronic or otherwise, in its or its agent's possession that contain such customer information and shall deliver to University a written certification of the destruction. Contractor shall indemnify and defend and hold University and its regents, employees, agents and contractors harmless from any and all claims, demands, suits, actions, liabilities and expenses (including reasonable attorneys' and investigative fees) arising out of an act or omission by Contractor or its agents and contractors that results in: (i) a person having access to or use of customer information in violation of law or this Contract for Professional Services; or (ii) the misuse, alteration, destruction or material alteration of customer information in violation of law or this Contract for Professional Services. Contractor shall reimburse University for its direct damages (e.g., costs to reconstruct lost or altered information) arising out of an act or omission by Contractor or its agents and contractors that results in: (i) a person having

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access to or use of customer information in violation of law or this Contract for Professional Services, or (ii) the misuse, alteration, destruction or material alteration of customer information in violation of law or this Contract for Professional Services.