

REGENTS OF THE
UNIVERSITY OF MINNESOTA

Center for Transportation Studies

REQUEST FOR INFORMATION ("RFI") # 1040
for

Video Production Services

Email, mail, or deliver one signed response to:

Annette Fritze, Contract Coordinator
Center for Transportation Studies
200 Transportation and Safety Building
511 Washington Ave. S.E.
Minneapolis, MN 55455
fritz283@umn.edu

Clearly label response with respondent name, RFI number, and title of the RFI.

Do not submit copies to any other person or location.

Schedule to Submit Responses

The initial submission date for this RFI is:

October 30, 2018, 4:00 p.m.

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 date below.

The final submission date for this RFI is:

October 30, 2021, 4:00 p.m.

For Technical Questions:

Michael McCarthy
Center for Transportation Studies
200 Transportation and Safety Building
511 Washington Ave. S.E.
Minneapolis, MN 55455
Phone: 612-624-3645
Email: mpmccarthy@umn.edu

For Administrative Questions:

Annette Fritze, Contract Coordinator
Center for Transportation Studies
200 Transportation and Safety Building
511 Washington Ave. S.E.
Minneapolis, MN 55455
Phone: 612-626-9587
Email: fritz283@umn.edu

NOTE:

- Nothing in this RFI shall be construed to require the University to issue an RFP.
- By submitting an RFI response, respondent acknowledges that:
 - University's RFI is simply a request for information and not a request for proposal.
 - University may or may not issue an RFP for the product or service described in this RFI.
 - No award or contract will be issued as a direct result of this RFI.

1. 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 ISSUANCE AND PURPOSE OF RFI

A Request for Information (RFI) is NOT a request for proposal, bid, or quotation. The purpose of this RFI is to gather information about the qualifications of contractors who perform the requested services; the Center for Transportation Studies may need to purchase these services in the future. Responses are sought from contractors who can perform the work described in the Summary of Requested Services. CTS may or may not choose to negotiate a contract with the Respondent at a later date.

1.2 QUESTIONS AND INQUIRIES

Respondents who have questions about the RFI should email such questions to the administrative contact listed on the title page.

Responses to written questions that 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 administrative contact listed on the title page that they are in receipt of an RFI package and for providing a name, address, and email 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.

1.3 TENTATIVE SCHEDULE OF EVENTS

RFI Issue	August 31, 2018
Initial Submission Date	October 30, 2018, 4:00 p.m.
Final Submission Date.....	October 30, 2021, 4:00 p.m.

1.4 RESPONSE SUBMISSION

1.4.1 NUMBER AND DESCRIPTION OF COPIES

Email, mail, or deliver one response to the attention of the administrative contact listed on the title page. All documents should be 8 1/2" x 11". The copies should be prepared in a manner that facilitates easy handling and reading.

1.4.2 COMPLETE RESPONSE – ELEMENTS AND ORDER

All responses must include:

1. Signed cover letter with:
 - a. Paragraph describing services offered and specialty area(s)
 - b. Name of contact person with phone number and email address
2. Response to Attachment A: Respondent Profile
3. Response to Attachment B: Description of Consultant’s Services
4. Response to Attachment C: Pricing
5. Response to Attachment D: References

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 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.

If respondent submits a corrected response, it must be clearly labeled as a correction to an earlier response with respondent's name, RFI number, and RFI title. Corrections will be accepted up to the final submission date.

1.8 ADDENDUM

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

1.9 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. 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.

- Clearly and conspicuously mark any Materials you believe to contain trade secret information.
- Enclose such Materials in a separate envelope that itself is clearly and conspicuously marked "Confidential."
- 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.

1.10 TESTING AND SAMPLES

The University may request a demonstration of or may request a test of any or all products or services described 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 a contract is awarded.

1.11 WITHDRAWING RFI RESPONSE

Respondents may withdraw their response at any time by submitting a written request to the administrative contact 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.

1.12 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.

1.13 NOTIFICATION OF AWARD

No notice of award will be issued as a result of this RFI. If CTS wishes to obtain services from a Respondent, CTS will contact the Respondent to initiate negotiation of work scope, budget, and schedule.

2. BACKGROUND AND SUMMARY OF REQUESTED SERVICES

The Center for Transportation Studies (CTS) at the University of Minnesota conducts ongoing and special outreach activities to foster an open exchange of ideas on transportation issues and to spur the implementation of research results and new technologies. CTS is a key provider of information to the transportation community and other constituencies in Minnesota and the nation.

CTS outreach initiatives take many forms—including websites, videos, and more. The CTS communications staff uses consultants and contractors to help develop and produce these materials. Many of these products can be viewed or downloaded at cts.umn.edu.

This RFI is issued by the Center for Transportation Studies to gather information about contractors who could provide video production services. Potential videos range from shorter clips of research technology and live events to longer features with complex production values that incorporate several topics and people, including professional actors if necessary. Fast turnaround may be required on some projects. The goal for all projects is to produce compelling video about University transportation-related research and activities with high-quality audio and visual elements.

Responses are sought from contractors who can demonstrate some or all of the qualifications described below. Tasks include the various aspects of videography, including pre-production, production, and post-production. Contractors should clearly state which services of those listed they could provide as well as identify particular areas of specialty. Contractors may be required to work in cooperation with other contractors.

Specific tasks may include some or all of the following:

- Participate in video project planning meetings.
- Create outlines, treatments, scripts, and storyboards based on a specific topic(s), gathering essential background information in consultation with CTS.
- Plan and/or stage shoots. This may also include preproduction-type meeting or discussion with the subject(s).
- Schedule shoots to accommodate availability of the subject(s), location(s), crew, and other elements.
- Scout for locations or shots to meet CTS needs, which may include outdoor work in snow or other adverse conditions.
- Shoot video at events such as conferences and live demonstrations.
- Shoot videos of researchers and their projects, planning shoots to capture the research and express it in a visually compelling way.
- Shoot on location to safely capture transportation scenes, such as traffic, vehicles, and construction.
- Perform post-production editing, including sound and special effects (e.g., motion graphics and animation).
- Deliver a high-resolution, high-quality digital video for distribution via DVD, the Internet, or other formats.
- Provide CTS a full HD master and an audio transcript of the final version of the video and the complete video project files in a compatible format for unrestricted use by CTS (e.g., Adobe Premiere Pro project files).
- Report to and consult with CTS regularly throughout all phases of pre-production, production, and post-production.

3. REQUIRED QUALIFICATIONS

Education, Training, and Experience

The response should clearly identify the Respondent's education, training, and experience in video production. The response should identify the names and titles of the key project personnel who would be made available to provide video production services for any future contract with CTS. Specifically, the response should discuss the experience and expertise of each key person and what potential role each would have in providing video production services. Additional consideration will be given to contractors whose personnel have specific experience in academia or in a transportation-related field. A resume or summary of each key person should be included.

Technical Skills

The response should indicate the Respondent's technical skills and equipment related to video production. Specifically, the Respondent should be able to use the latest videographic technologies and techniques during all phases of pre-production, production, and post-production.

Interpersonal Skills/Collaboration

Respondents may be asked to shoot busy and possibly reluctant subjects; thus, strong interpersonal skills will be important in order to set the subjects at ease, manage a good shoot, and obtain visually compelling material.

Special Services

The response should provide details regarding any special services or product characteristics, other benefits offered, or advantages to the University in selecting the Respondent's services.

ATTACHMENT A
RFI # 1040

RESPONDENT PROFILE

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.

ATTACHMENT B
RFI # 1040

DESCRIPTION OF CONSULTANT'S SERVICES

Please describe your services and qualifications and/or attach a resume. Explain how your skills and experience correspond to the Summary of Requested Services. Include samples or URLs.

ATTACHMENT C
RFI # 1040

PRICING

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

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

Cost of service at per hour rate: \$_____

Note: CTS may negotiate work based on other criteria, e.g., per project.

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.

ATTACHMENT D
RFI # 1040

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 email address, and summary of work performed.

UNIVERSITY OF MINNESOTA

Regents of the University of Minnesota Sample of Contract for Professional Services Terms and Conditions

1. **Acceptance and Term.** Contractor accepts these terms and conditions by starting work after receiving the University's Contract for Professional Services ("CPS") or by not objecting to these terms and conditions within ten (10) days after receiving the CPS. This Agreement is effective on the date indicated on the CPS and will remain in effect until the date indicated on the CPS, until all obligations set forth in this Agreement have been fulfilled, or the Agreement has been terminated, whichever occurs first. ANY WORK PERFORMED PRIOR TO THE EFFECTIVE DATE WILL BE PERFORMED AT CONTRACTOR'S OWN RISK AND AS A VOLUNTEER.

2. **Scope of Work.** Contractor will perform all of the services and supply goods (if any) set forth in the CPS ("Services") and any exhibits attached thereto ("Scope of Work"). Time is of the essence. Contractor will meet all milestones indicated on the CPS and Scope of Work.

3. **Consideration and Terms of Payment.** University will pay for all Services as follows:

3.1. **Total Obligation.** University's total obligation to Contractor will not exceed the amount indicated on the CPS without University's prior, express written approval. Reimbursement requests must be itemized and accompanied by receipts. Travel expenses must be consistent with University's travel policy, <https://policy.umn.edu/finance/travel>.

3.2. **Invoicing and Terms of Payment.** Contractor will submit invoices upon completion of milestones described in Exhibit A, or as provided in Exhibit A. University will pay such invoices thirty (30) days after receipt of Contractor's invoice.

3.3 **Taxes.** University will generate a 1099-MISC for fees and reimbursed expenses to individuals, sole proprietors, partnerships, and LLCs, and will report such amounts to the IRS. Reimbursed expenses may be deductible on the Contractor's tax return. Contractor should contact its tax advisor with questions or for advice. University may be required to withhold state and federal taxes from the compensation, such as, but not limited to, Minnesota state entertainer tax and nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding. See Section 4.23.

4. **General Terms and Conditions.** These terms and conditions will govern and control over different or additional terms and conditions Contractor may have included in any document provided to University. Handwritten changes on this document will be ignored and have no effect unless initialed by both parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Bid (RFB), the following order of precedence will apply: (1) this Agreement and its Exhibits, (2) RFP or RFB, and (3) Contractor's Response to RFP or RFB.

4.1. **Choice of Law, Forum Selection, Entire Agreement, and Amendment.** This Agreement will be construed under Minnesota law, without regard for choice of law considerations, and the University's policies and procedures. Any action arising out of this Agreement will be heard by a court in Minnesota. Contractor consents to jurisdiction in Minnesota. This Agreement is the parties' entire agreement and understanding and replaces any prior or contemporaneous agreement, written or oral. Any Amendment to this Agreement must be documented by University's Change Order ("Amendment"). Further, if Services are being procured with federal funds, the requirements set forth in Exhibit B

(<http://purchasing.umn.edu/docs/FederalFlowdown.pdf>) are incorporated into this Agreement. In addition, if the price is in excess of \$10,000, **University and Contractor shall abide by the requirements of 41 CFR 60-741.5(a), which prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.** If the price is in excess of \$100,000, **University and Contractor shall abide by the requirements of 41 CFR 60-300.5(a), which prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.** Also, if federal funds are being used, Contractor must fill out the form required by the Federal Funding Accountability and Transparency Act, Pub. L. No. 109-282. If federal contract funds are not being used, Contractor will not receive Exhibit B.

4.2. Warranty. Contractor warrants (i) it is not debarred or suspended from doing business with the federal government, and it will notify University if it becomes debarred or suspended; and (ii) the Services will be of professional standards and quality; are free from defects in material and workmanship; are the quality, size and dimensions ordered; comply with Contractor's representations in any advertisement, correspondence, response to University's RFP or RFB, or other document provided to University; comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and are not restricted by patents, copyrights, trade secrets, or other rights of third parties. If any warranty is breached, Contractor will correct the breach at its sole expense, and University reserves all rights and remedies. The foregoing warranties will not be deemed waived by reason of University's acceptance of the Services.

4.3. Inspections and Delivery. University will have a reasonable time (not less than thirty [30] days) after receipt to inspect and test Services and reject any or all nonconforming items. Services rejected or in excess of quantities ordered may be returned at Contractor's expense. University reserves the right to refuse any Services and to cancel all or part of this Agreement if Contractor fails to deliver all or any part of the Services. If University accepts nonconforming or defective Services, in addition to its other remedies, University may deduct a reasonable amount from the price to compensate University for the nonconformity.

4.4. Assignment. Neither party may assign any part of this Agreement without the other's express, prior written consent. In the event of any assignment, the assignor will remain responsible for its performance and that of any assignee. This Agreement will be binding upon each party and its successors and assigns. Any attempted assignment in violation of this Agreement will be void. Notwithstanding any notice of assignment, University's tender of payment to Contractor or to any person University reasonably believes to be entitled to payment, will satisfy University's obligation to pay. In no event will 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 certain Minnesota sales and use taxes. Minn. Stat. § 297A.70. Contractor will not charge University for such taxes. Alternatively, Contractor will be responsible for payment of any and all sales taxes relating to the following items: construction materials, leased motor vehicles, food and lodging. Contractor will promptly reimburse University for such taxes University pays on Contractor's behalf, including penalties, damages, interest, and expenses (including attorneys' fees) resulting from Contractor's failure to properly remit or reimburse University for such taxes.

4.6. Risk of Loss. Risk of loss will pass to University upon actual receipt and acceptance, at the University destination. Contractor assumes responsibility for packing, crating, marking, transporting and loss or damage in transit, notwithstanding University's agreement to pay freight, express, or other transportation charges.

4.7. Use of Name or Logo. Neither party will use the name, logo, or other marks (including, but not limited to, colors and music) owned by or associated with the other or the name of any representative of the other in any sales promotion work or advertising, or any form of publicity, without the written permission of the other. Permission from the University must be obtained from University's Office of University Relations in each instance.

4.8. Termination. University may terminate this Agreement in whole or in part for its convenience. Upon notice of such termination, Contractor will immediately stop all work, including shipment of goods, and cause its suppliers and subcontractors to cease work for this Agreement. In the event of such termination, Contractor will be entitled to payment, calculated on a pro rata or other equitable basis, for Services satisfactorily performed. In no event will 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, condition, or requirement of this Agreement or becomes insolvent or files for bankruptcy protection. In this event, University will not be liable to Contractor; Contractor will be liable to University for all losses, damages, and expenses, including, without limitation, excess cost of reprocurring similar Services; shipping charges for items University may at its option return to Contractor, including items already delivered; 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, such termination will be deemed to have been for University's convenience.

4.9. Independent Contractor. The relationship between the parties is solely that of independent contractors, not partners, joint venturers, employees, agents, or otherwise. Neither shall have any authority to bind the other in any manner, and shall not represent or imply that it has such authority. Each party will pay when due all required employment taxes and tax withholding and acknowledges that it and its employees are not entitled to tax withholding, workers' compensation, unemployment compensation or any employee benefits, statutory or otherwise. Each party is solely responsible for the acts of itself, its employees and agents.

4.10. Non-Waiver. No waiver by a party of any default or nonperformance will be deemed a waiver of any subsequent default or nonperformance.

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

4.12. Limitation of Liability. IN NO EVENT WILL A PARTY 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 WILL NOT EXCEED THE AMOUNT SET FORTH IN SECTION 3.

4.13. Changes. University may, by written notice, change drawings, designs, specifications, materials, packaging, and the time and place of delivery and/or completion of the Services. Promptly upon receipt of such notice, Contractor will 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 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 such change will constitute Contractor's agreement to the change without change in the amount to be paid, time of completion, or other terms and conditions of this Agreement.

4.14. University Information. Contractor agrees that any information it receives which concerns personal, financial, or other affairs of University, its regents, officers, employees or students will 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, Minn. Stat. Ch. 13 ("DPA"). Within fifteen (15) days of the completion or earlier termination of this Agreement, or upon earlier request of University, Contractor will return all documents, data and other information provided by University to Contractor. Upon University's request, Contractor will destroy all copies of data, documents, or information provided by University and provide University with proof of such destruction. Contractor will comply with DPA as it applies to data created, collected, received, stored, used, maintained, or disseminated by Contractor or provided by University under this Agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this Article by either Contractor or University.

4.15. Intellectual Property Rights. "Works" means 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 Contractor prepares and delivers under this Agreement. University will exclusively own all Works and all copyrights, trademarks, patents and other proprietary rights in the Works. All copyrightable Works will be considered "work made for hire." If the Works may not be considered work made for hire under 17 U.S.C., §§ 101 and 201(b), Contractor will assign all rights Contractor may have in the Works to University without further compensation. Contractor waives any and all statutory moral rights in the Works which Contractor may have 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 will, 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.

4.16. Insurance. Unless more specific insurance provisions are attached, the following will apply. At all times during its performance under this Agreement, Contractor will obtain and keep in force:

i. Commercial General Liability insurance including coverage for bodily injury and property damage with limits not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

- ii. Automobile Liability insurance with a minimum limit of not less than \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
- iii. Professional Liability/Errors & Omissions insurance (if applicable) with a limit of not less than \$1,000,000 per claim/occurrence and \$2,000,000 annual aggregate for damages caused by error, omission or negligent acts related to any professional services to be provided under this Agreement. If written on a claims-made basis, the professional liability insurance will be maintained for a period of not less than two (2) years following the expiration or termination of this Agreement.
- iv. Workers' Compensation insurance as required by statute and Employers Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 disease – each employee, \$1,000,000 disease – policy limit.

These insurance policies are to be issued by an insurance company authorized to do business in the State of Minnesota with an A.M. Best rating of A- or better. Regents of the University of Minnesota will be included as an additional insured for General Liability and Automobile Liability. Limit requirements may be met through combination of Primary and Umbrella/Excess insurance. All such policies will provide for thirty (30) days' written notice to University prior to cancellation or non-renewal. Contractor's insurance must be primary and non-contributory with regard to any insurance or self-insurance maintained by University. Contractor and its insurers waive all rights of subrogation against University. A Certificate of Insurance evidencing the requirements contained in this clause must be provided prior to the commencement of work.

4.17. Responsibility. Subject to applicable law, including, with regard to the University, the Minnesota Tort Claims Act, each party will be solely responsible for all claims, actions, and direct damages caused by the responsible party's negligence, willful wrong-doing or breach of this Agreement.

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

4.19. Affirmative Action, Equal Employment Opportunity, and Targeted Group Business. University is committed to the policy that all persons will 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 its 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 its employees and not allow employees to perform services at segregated facilities. If required by applicable law, Contractor will have a written Affirmative Action Plan for each of its establishments. To the extent applicable, Contractor agrees to comply with (i) Executive Orders 11246 and 11375 and the rules and regulations promoting Equal Employment Opportunities (41 CFR Chapter 60); (ii) Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations promoting employment opportunities for disabled and Vietnam veterans (41 CFR Part 60-250); (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 will 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 will 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.

4.20. Anti-Trust Violations. In actual economic practice, the buyer bears overcharges resulting from antitrust violations. Therefore, Contractor hereby assigns to University, any and all claims for such overcharges as to Services.

4.21. 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 will 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.

4.22. Notices/Administration. Notices a party is required or elects to deliver will be in writing and delivered personally, by facsimile or electronic mail (with delivery 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 CPS or to such other address as such party may designate by notice given pursuant to this section.

4.23. Acknowledgement. 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 277, Minneapolis, MN 55454-1082, purchase@umn.edu, 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 acknowledges that University may withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the effective date of this Agreement.

4.24. University Contract Number. Contractor will place University Contract Number on any packages, invoices, packing slips, notices and correspondence related to this Agreement.

4.25. "Most Favored Customer". If Contractor has negotiated terms or conditions for Services to another client under reasonably similar circumstances, University may purchase Services on the same terms and conditions.

4.26. Cash Discount Period. The cash discount or other payment discount period available to University will commence on the later of: (i) University's receipt of all Services under this Agreement, or (ii) University's receipt of Contractor's invoice.

4.27. Fund Availability; Federal Funds Contingency. University's financial obligations 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 those funds for the purposes hereof.

4.28. Severability. If any provision of this Agreement is 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, will not be affected and each provision of the remainder of the Agreement will be valid and be enforceable to the fullest extent permitted by law.

4.29. Survivability. The terms and conditions of this Agreement that by their sense and context are intended to survive the performance thereof will so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

4.30. Gramm-Leach-Bliley Security Compliance. If the Services are subject to the Gramm-Leach-Bliley Act, Contractor will implement and maintain 'appropriate safeguards,' (see § 16 C.F.R. § 314 (the 'FTC Rule')), for all 'customer information' owned by University and delivered to Contractor pursuant to this Agreement. Contractor will 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 University employees or representatives to inspect Contractor's business records, procedures, rules and practices pertinent to the 'safeguards'; and (ii) making available to University employees or representatives Contractor's employees or representatives who have authority to maintain or are knowledgeable of such 'safeguards'. Contractor will promptly notify University in writing, of each instance of: (a) unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer of University; or (b) unauthorized disclosure, misuse, alteration, destruction or other compromise of customer information. Within thirty (30) days of the termination or expiration of this Agreement, Contractor will destroy and will cause each of its agents to destroy all records, electronic or otherwise, in its or its agent's possession that contain customer information and will deliver to University a written certification of the destruction. Contractor will defend, indemnify 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: (x) a person having access to or use of customer information in violation of law or this Agreement; or (y) the misuse, alteration, destruction or material alteration of customer information in violation of law or this Agreement. Contractor will 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: (α) a person having access

to or use of customer information in violation of law or this Agreement, or (β) misuse, alteration, destruction or material alteration of customer information in violation of law or this Agreement.

4.31. Export Controls (International Traffic in Arms Regulations and Export Administration Regulations). Before furnishing goods, software, services or technical data that are on the U.S. Munitions List (22 C.F.R. pt. 121) or in the 500- or 600-series of the Commerce Control List (15 C.F.R. pt. 774), Contractor will notify University that such items are export controlled. Contractor will ship export-controlled items only after University's Export Controls Officer has furnished written confirmation that University is prepared to accept delivery of such items.

4.32. Payment Card Industry Data Security Standards (PCI DSS) Compliance. In the event Contractor may have access to credit or debit card information and/or may affect the security of a credit or debit card transaction, Contractor agrees to the Payment Card Industry Data Security Standards (PCI DSS) set out in Exhibit D (available at <http://purchasing.umn.edu/docs/cardholder-data-security.pdf>).

SAMPLE