

CUSTOMER CONTRACT REQUIREMENTS
Minnesota Criminal History System (CHS)
CUSTOMER CONTRACT 84254

CUSTOMER CONTRACT REQUIREMENTS

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

Survival of terms

The following clauses survive the expiration or cancellation of this Contract: State audits; Government data practices and intellectual property; Publicity and endorsement; Data disclosure.

State audits

Under Minn. Stat. § 16C.05, subd. 5, the Seller's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

Government data practices and intellectual property

The Seller and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Seller under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the Seller or the State. If the Seller receives a request to release the data referred to in this clause, the Seller must immediately notify and consult with the Buyer as to how the Seller should respond to the request in compliance with applicable law.

Intellectual property rights

Pre-existing Intellectual Property

Buyer and Seller shall each retain ownership of, and all rights, title, and interest in their own pre-existing intellectual property and all derivative works arising there from, subject to any license rights contained herein or otherwise executed between the parties.

Intellectual property rights.

To the extent permitted by third party intellectual property rights, and any Software License Agreements executed between the parties and incorporated by reference into this Agreement,

Boeing shall receive all rights, title, and interest in the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the works and documents created or originated under this agreement, or in the specific works and documents created by the Seller, its employees, agents, and sub-contractors, either individually or jointly with others in the performance of this Contract. The "works" for purposes of this paragraph means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, by Seller, its employees, agents, and sub-contractor, either individually or jointly with others in the performance of this Contract. "Works" includes documents. The "documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Seller, its employees, agents, or sub-contractors, in the performance of this Contract. Such documents will be the exclusive property of Boeing or its customer and all such documents must be immediately returned to Boeing by the Seller upon completion or cancellation of this Contract. The Seller must, at the request of Boeing execute all papers and perform all other acts necessary to transfer or record Boeing's ownership interest in the works and documents pursuant to this paragraph.

Obligations

Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Seller, including its employees and sub-contractors, in the performance of this Contract, the Seller will immediately give Boeing's Authorized Representative written notice thereof, and must promptly furnish the Boeing's Authorized Representative with complete information and/or disclosure thereon.

Representation

Seller must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of Boeing for those items that Boeing is granted title in under this Agreement, and that neither Seller nor its employees, agents, or sub-contractors retain any interest in and to the works and documents. The Seller represents and warrants that the intellectual property provided under this Agreement do not infringe upon any intellectual property rights of other persons or entities. Seller will indemnify; defend, and hold harmless Boeing, at the Seller's expense, from any action or claim brought against Boeing to the extent that it is based on a claim that all or part of its intellectual property infringes upon the intellectual property rights of others, subject to the limitations and restrictions contained herein

Seller's obligations under this paragraph shall not apply unless Seller has been informed as soon as practicable by the other of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to solely control the defense thereof. The Seller will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. Notwithstanding the foregoing, such indemnity under this Section shall not apply if the infringement arises from, or is related to; (1) State Pre-Existing or created Intellectual Property; (2) any data sources, web sites, or any other information or content integrated or otherwise made available by the State with the Seller provided or serviced intellectual property; (2) written instructions of the State, whether expressly incorporated into the relevant statement of work or otherwise, directing the incorporation or inclusion of certain data sources into the Seller provided or serviced intellectual property that may implicate the intellectual property rights of a third party; (3) a change to the Seller's standard manner of performance in the Seller provided or serviced intellectual property; (4) the addition to, or change in, the supplies furnished, which addition or change was made subsequent to delivery or performance by the Seller; (5) the State's use of the Seller's intellectual property supplied in a system patented by a party other than the Seller; or (6) if the settlement of an infringement claim without the consent of Seller, unless required by final decree of a court of competent jurisdiction. Seller makes no other representation, guarantee, or warranty as to the scope of validity of any Seller software or licensed materials supplied under this Contract as to any rights, information, products, and/or services granted or provided under this Contract or as to any intellectual property rights herein, or that State's use thereof shall be free from infringement of any intellectual property rights held by third parties. If

such a claim or action arises, or in the Seller's or the State's opinion is likely to arise, the Indemnifying Party must, at the other's discretion, either procure for the other the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy will be in addition to and not exclusive of other remedies provided by law.

Insurance Requirements

Seller shall not commence work under the contract until they have obtained all the insurance described below and Buyer has approved such insurance. Seller shall maintain such insurance in force and effect throughout the term of the contract.

Seller is required to maintain and furnish satisfactory evidence of the following insurance policies:

Workers' Compensation Insurance

Except as provided below, Seller must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Seller will require the sub-contractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 - Bodily Injury by Disease per employee

\$500,000 - Bodily Injury by Disease aggregate

\$100,000 - Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Seller from Workers' Compensation insurance or if the Seller has no employees in the State of Minnesota, Seller must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Seller from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Seller becomes eligible for Workers' Compensation, the Seller must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

Commercial General Liability Insurance

Seller is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Seller or by a sub-contractor or by anyone directly or indirectly employed by the Seller under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 - per occurrence

\$2,000,000 - annual aggregate

\$2,000,000 - annual aggregate - Products/Completed

Operations The following coverages shall be

included:

Premises and Operations Bodily Injury and
 Property Damage Personal and Advertising Injury
 Blanket Contractual Liability
 Products and Completed Operations Liability
 Other; if applicable, please list _____

State of Minnesota named as an Additional Insured, to the extent permitted by law, and consistent with Sections 8 and 9 of this Agreement.

Commercial Automobile Liability Insurance

Seller is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the Seller will require the sub-contractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000- per occurrence Combined Single limit for Bodily Injury and

Property Damage In addition, the following coverages should be included:
 Owned, Hired, and Non-owned Automobile

Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance

This policy will provide coverage for all claims the Seller may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Seller's professional services required under the contract.

Seller is required to carry the following **minimum** limits:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Seller and may not exceed \$50,000 without the written approval of the State. If the Seller desires authority from the State to have a deductible in a higher amount, the Seller shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Seller to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Seller shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Seller to fulfill this requirement.

Additional Insurance Conditions:

Seller's policy(ies) shall be primary insurance to any other valid and collectible insurance available to Buyer with respect to any claim arising out of Seller's performance under this contract;

If Seller receives a cancellation notice from an insurance carrier affording coverage herein, Seller

agrees to notify Buyer within five (5) business days with a copy of the cancellation notice, unless Seller's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;

Seller is responsible for payment of Contract related insurance premiums and deductibles;

If Seller is self-insured, a Certificate of Self-Insurance must be attached;

Seller's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;

Seller shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and

An Umbrella or Excess Liability insurance policy may be used to supplement the Seller's policy limits to satisfy the full policy limits required by the Contract.

Buyer reserves the right to immediately terminate the contract if the Seller is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Seller. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

The successful responder is required to submit Certificates of Insurance acceptable to Buyer as evidence of insurance coverage requirements prior to commencing work under the contract.

Publicity and endorsement

Publicity

Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Seller individually or jointly with others, or any sub-contractors, with respect to the program, publications, or services Non-discrimination (In accordance with Minn. Stat. § 181.59)

The Seller will comply with the provisions of Minn. Stat. § 181.59 which require:

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the Seller agrees:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Seller, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;*
- (2) that no Seller, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;*
- (3) that a violation of this section is a misdemeanor; and*
- (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any*

subsequent violation of the terms or conditions of this contract."

provided resulting from this Contract. Except as may be accessed via a public website, Seller shall not use State's production system, non-production systems, or data for sales purposes or demonstrations to third parties.

Endorsement

The Seller must not claim that Buyer or the Customer endorses its products or services.

Data disclosure

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Seller consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Seller to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

Non-discrimination (In accordance with Minn. Stat. § 181.59)

The Seller will comply with the provisions of Minn. Stat. § 181.59 which require:

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the Seller agrees:

- (5) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Seller, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;*
- (6) that no Seller, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;*
- (7) that a violation of this section is a misdemeanor; and*
- (8) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."*

E-Verify certification (In accordance with Minn. Stat. § 16C.075)

For services valued in excess of \$50,000, Seller certifies that as of the date of services performed on behalf of the State, Seller and all its sub-Contractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Seller is responsible for collecting all sub-contractor certifications and may do so utilizing the *E-Verify Sub-Contractor Certification Form* available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>.

All sub-contractor certifications must be kept on file with Seller and made available to the State upon request.