

**STATE OF MINNESOTA  
PROFESSIONAL AND TECHNICAL SERVICES  
MASTER CONTRACT**

This master contract is between the State of Minnesota, acting through its Commissioner of Commerce ("State") and RSM McGladrey Inc., 1954 Greenspring Drive, Suite 400, Timonium, MD 21093 ("Contractor").

**Recitals**

- Under Minn. Stat. § 15.061 Minn. Stat. § 60A.031 the State is empowered to engage such assistance as deemed necessary.
- The State is in need of professional and technical services to perform statutory financial examinations.
- The Contractor represents that it is duly qualified and agrees to perform all services described in this master contract and performed under work order contracts to the satisfaction of the State.

**Master Contract**

**1 Term of Master Contract**

- 1.1 **Effective Date:** July 1, 2010, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.  
The Contractor must not accept work under this master contract until this master contract is fully executed and the Contractor has been notified by the State's Authorized Representative that it may begin accepting Work Order Contracts.
- 1.2 **Work Order Contracts:** The term of work under work order contracts issued under this master contract may not extend beyond the expiration date of this master contract.
- 1.3 **Expiration Date:** June 30, 2012. This Master Contract may be extended for up to three 1-year periods upon agreement of the parties, through June 30, 2015.
- 1.4 **Survival of Terms.** The following clauses survive the expiration or cancellation of this master contract and all work order contracts: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 18. Data Disclosure.

**2 Scope of Work**

The Contractor, who is not a state employee, may be requested to perform any of the following services under individual work order contracts:

Financial examinations of Minnesota domiciled insurance companies in accordance with the Minnesota Procedures Manual and the NAIC Financial Condition Examiners Handbook, Minnesota Laws, and Minnesota Regulations. These examination procedures will include, but not be limited to, financial statement review procedures, actuarial review procedures, information systems review procedures, reinsurance review procedures, and other special projects assigned as needed in conjunction with the determination of financial condition.

The Contractor understands that only the receipt of a fully executed work order contract authorizes the Contractor to begin work under this master contract. Any and all effort, expenses, or actions taken before the work order contract is fully executed is not authorized under Minnesota Statutes and is under taken at the sole responsibility and expense of the Contractor.

The Contractor understands that this master contract is not a guarantee of a work order contract. The State has determined that it may have need for the services under this master contract, but does not commit to spending any money with the Contractor.

### 3 Time

The Contractor must use diligent efforts to comply with all the time requirements described in work order contracts. The State acknowledges and agrees that the proper and timely completion of the Contractor's services hereunder for the amount set forth in the work order contract requires a high level of cooperation and assistance from the Company and its independent auditors, including reasonable access to the independent auditors' workpapers and timely and accurate preparation of examination schedules and analyses by Company personnel. In the performance of work order contracts, extensions of time will be granted for 60 days upon proper notification to the State's Authorized Representative that work will not be completed on the original expiration date.

### 4 Consideration and Payment

4.1 *Consideration.* The State will pay for all services satisfactorily performed by the Contractor for all work order contracts issued under this master contract. The total compensation of all work order contracts may not exceed \$7,500,000.

*Travel Expenses.* Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of any work order contract will be reimbursed upon approval of the State's Authorized Representative and the State's Project Manager. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

#### 4.2. Payment

- a. *Invoices.* The State will pay the Contractor within 30 days after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Should the State reasonably dispute any portion of an invoice, the State shall pay the undisputed portions and the parties agree to aggressively work through and resolve any such dispute. Invoices must be submitted timely and no more frequently than monthly. Without limiting its rights or remedies, the Contractor shall have the right to halt or terminate the performance of services entirely if payment is not received for any invoice or portion of invoice not disputed, within 90 days of the invoice date.
- b. *Retainage.* Under Minn. Stat. § 16C.08, subd. 5(b), no more than 90 percent of the amount due under any work order contract may be paid until the final product of the work order contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of the work order contract.

### 5 Conditions of Payment

All services provided by the Contractor under a work order contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

**6 Authorized Representatives and Project Managers**

The State's Authorized Representative for this master contract is Jacqueline L. Gardner, Assistant Commissioner, Financial Institutions - Insurance/Actuarial, Department of Commerce, 85 7<sup>th</sup> Place East, Suite 500, St. Paul, MN 55101, [REDACTED] or her successor, and has the responsibility to monitor the Contractor's performance.

The State's Project Manager will be identified in each work order contract.

The Contractor's Authorized Representative is Joseph F. Clark, Managing Director, RSM McGladrey Inc. 1954 Greenspring Drive, Suite 400, Timonium, MD 21093, [REDACTED] If the Contractor's Authorized Representative changes at any time during this master contract, the Contractor must immediately notify the State.

The Contractor's Project Manager will be identified in each work order contract.

**7 Assignment, Amendments, Waiver, and Contract Complete**

**7.1 Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this master contract or any work order contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this master contract, or their successors in office.

**7.2 Amendments.** Any amendment to this master contract or any work order contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.

**7.3 Waiver.** If the State fails to enforce any provision of this master contract or any work order contract, that failure does not waive the provision or its right to enforce it.

**7.4 Contract Complete.** This master contract and any work order contract contain all negotiations and agreements between the State and the Contractor. No other understanding regarding this master contract or work order contract, whether written or oral, may be used to bind either party.

**8 Liability**

The Contractor must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this master contract or work order contract by the Contractor or the Contractor's agents or employees. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligations under this master contract or any work order contract. Additionally, in no event shall the Contractor's liability relating to the Master Contract and any Work Order Contract entered into pursuant to the Master Contract exceed the amount of fees paid by the State to the Contractor under the Master Contract and Work Order Contract. With respect to any statutory financial examinations performed hereunder, the Contractor is protected from liability pursuant to Minnesota Statute 60A.031, as authorized examiners retained by the State, except as a result of negligence on the part of the Contractor.

**9 State Audits**

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to any work order 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 master contract.

10 Government Data Practices and Intellectual Property

10.1. *Government Data Practices.* The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under any work order contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under the work order contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

10.2. *Intellectual Property Rights*

(A) *Intellectual Property Rights.* The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under work order contracts.* Works 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, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this master contract or any work order contract. Works includes "Documents." 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 Contractor, its employees, agents, or subcontractors, in the performance of a work order contract. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of the work order contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

(B) *Obligations*

1. 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 Contractor, including its employees and subcontractors, in the performance of the work order contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

2. Representation. The Contractor 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 the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify, defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's

expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights

of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State 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 of the State will be in addition to and not exclusive of other remedies provided by law.

## 11 Affirmative Action

The State intends to carry out its responsibility for requiring affirmative action by its Contractors.

11.1 *Covered Contracts and Contractors.* If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

11.2 *Minn. Stat. § 363A.36.* Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

11.3 *Minn. R. Parts 5000.3400-5000.3600.*

a. *General.* Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

b. *Disabled Workers.* The Contractor must comply with the following affirmative action requirements for disabled workers.

1. The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
  5. The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- c. *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.
- d. *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

## 12 Workers' Compensation and Other Insurance

- A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.
- B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:
1. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor 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 Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

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

2. **Commercial General Liability Insurance:** Contractor 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 Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor 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  
State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability Insurance:** Contractor 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 contractor will require the subcontractor 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 must be included:

Owned, Hired, and Non-owned Automobile

4. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance**

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

Contractor is required to carry the following minimum limits:

\$1,000,000 – annual aggregate

C. Additional Insurance Conditions:

- o Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
- o Contractor's policy(ies) and Certificate(s) of Insurance shall contain a provision that coverage afforded under the policy(ies) shall not be cancelled without the insurer endeavoring to provide at least thirty (30) days advanced written notice to the State of Minnesota;

- o Contractor is responsible for payment of Contract related insurance premiums and deductibles;
  - o Include legal defense fees in addition to its liability policy limits, and
  - o Obtain insurance policies from an insurance company having an "A.M. BEST" rating of A-VIII or better; and
  - o An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.
- D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. Evidence of insurance policies must be provided to the State upon written request.
- E. The contractor is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the contract.

The contractor will be required to submit acceptable evidence of insurance coverage requirements prior to execution of the contract.

Further, the Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

### 13 Publicity and Endorsement

13.1 *Publicity.* Any publicity regarding the subject matter of a work order 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 Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from a work order contract.

13.2 *Endorsement.* The Contractor must not claim that the State endorses its products or services.

### 14 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this master contract and all work order contracts. Venue for all legal proceedings out of this master contract and/or any work order contracts, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

### 15 Payment to Subcontractors

(if applicable) As required by Minn. Stat. § 16A.1245, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half

percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

16 **Minn. Stat. § 181.59** The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

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 contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, 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 contractor, 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.

17 **Termination**

17.1 *Termination by the State.* The State or commissioner of Administration may cancel this master contract and any work order contracts at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment for services satisfactorily performed.

17.2 *Termination for Insufficient Funding.* The State may immediately terminate this master contract and any work order contract if it does not obtain funding from the Minnesota legislature or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the master contract or work order is terminated because of the decision of the Minnesota legislature or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

18 **Data Disclosure**

Under Minn. Stat. § 270.66, and other applicable law, the Contractor 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 tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Contractor to file state tax returns and pay delinquent state tax liabilities, if any.

19 **Foreign Outsourcing**

Contractor agrees that the disclosures and certifications made in its Location of Service Disclosure and Certification Form submitted with its proposal are true, accurate and incorporated into this contract by reference.

20 Employee Status

By order of the Governor's Executive Order 08-01, if this contract, including any extension options, is or could be in excess of \$50,000, Contractor certifies that it and its subcontractors:

1. Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and
2. By the date of the performance of services under this contract, Contractor and all its subcontractors have implemented or are in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

Contractor shall obtain certifications of compliance with this section from all subcontractors who will participate in the performance of this contract. Subcontractor certifications shall be maintained by Contractor and made available to the state upon request. If Contractor or its subcontractors are not in compliance with 1 or 2 above or have not begun or implemented the *E-Verify* program for all newly hired employees performing work under the contract, the state reserves the right to determine what action it may take including but not limited to, cancelling the contract and/or suspending or debarring the contractor from state purchasing.

I. CONTRACTOR

The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles or bylaws.

By: Reidvoque  
 Title: CHIEF FINANCIAL & OPERATIONS OFFICER  
 Date: 6/23/10

2. STATE AGENCY

By: Kevin M. Murphy  
 (with delegated authority)  
 Title: Deputy Commissioner  
 Date: 6/24/10

3. COMMISSIONER OF ADMINISTRATION  
As delegated to Materials Management Division

By: Michael S. Ward  
 Date: July 1, 2010