SAMPLE LANGUAGE AND POSSIBLE MODIFICATIONS *some may be older and we do not have updated vendor language, but have sample language on how to address them.

Definition or Clause	Vendor Language	Modifications or Suggestions
Customer	Single agency or single division within an agency	*The State of Wisconsin as represented by its Department of XXX*
Delivery	The point that the software is shipped from	Delivery is the point that the software is installed on Licensee's environment, tested and accepted by the Licensee and notification is provided to the Licensor.
License Grant, Term and Restrictions	The Licensor grants to the Licensee a limited, non-exclusive and non-transferable right to use the Software for its own internal business purposes on computers identified in the Order that are located at the Designated Site.	*On the terms and condtions set forth herein, Supplier hereby grants to Customer a fully paid-up, irrevocable, nonexclusive, worldwide, perpetual license to use the Licensed Software and Documentation, plus any Licensed Software which shall be added to the Program Set duritg the term of this Agreement, on or in connection with any CPU utilized by Customer to fulfill its own data processing needs. ***ALSO include the fee reflecting either the RFP, RFB, or quote fro a reseller and if the State is purchasing the Source Code. * Software ordered shall be presumed to be Contractors' most recently released version at the time of delivery, unless an earlier version is specifically requested in writing by the State and Contractor is able to provide such version. * Customer shall not use any product in a service account function except where charges are a cost recovery mechanism related to Customer's internal chargeback procedures.* ** The State may (i) use products licensed under this Agreement on hardware located on DET's premises; or (ii) license products for the exclusive use and benefit of a related entity and install such product(s) on hardware and perform activities that support the State or a related entity, such as applying product authorization codes, installing updates and new releases and the like. In no event shall the State or any other entity of the State perform such services for any third party that is not a related entity.*
Warranties and Disclaimers	Licensor warrants that the Software will function substantially in accordance with the functional specifications. OTHER THAN THE FOREGOING, LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WIHTOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.	Should include: 1. The media on which the Licensed Software is provided shall be free of defects in material and workmanship, 2. The Licensed Software shall possess all materialfunctions and features as described in the Specifications, 3. The Licensed software shall perform in accordance with the Specifications, User Manuals, and Documentation, 4. Customer shall have the right for ninety (90) days after execution of this Agreement to return the Licensed Software and recieve a full refund of all license adn maintenace fees paid to Supplier pursuant to this Agreementin the event the Products do not meet the programmig requirements of Customer, as Customer shall determine in the sole exercise of its discretion.
Ownership and Intellectual Property Rights	Even with purchases of perpetual software licenses where the customer is purchasing the right to use the software in perpetuity, traditional rights of ownership don't transfer Right to resell, modify, share is prohibited. It is reasonable and expected for the Licensor to protect their IP rights to the software Often this includes right to own and use customer's feedback on the software's performance in its continued improvement **Ensure that if the licensor reserves rights to customer's feedback that use of the feedback is never for commercial purposes**	The State of Wisconsin shall own the rights to all data/records produced as part of the Contract. If the Licensor anticipates bringing pre-existing intellectual property into the project, the intellectual property shall be identified in its Proposal. If the Licensor identifies such intellectual property ("Background IP") in its Proposal, then the Background IP owned by the Licensor on the date of the Contract, as well as any modifications or adaptations thereto, remain the property of the Licensor.
Intellectual Property Infringement	Licensee will indemnify, defend, and hold harmless Licensor from any and all claims, losses, liabilities, damages, fees, expenses and costs (including attorneys' fees, court costs, damage awards, and settlement amounts) which result from any claim or allegation against the Licensor arising from Licensee's use of the Software or its breach of any term of this Agreement.	Licensor agrees it will at its sole cost and expense, defend, indemnify, and hold harmless the Indemnified Parties from and against all Claims, to the extent such Claims arise out of, result from, or are attributable to the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by Licensor or its employees, subcontractors, consultants, representative, and agents; provided, however, Licensee gives Licensor prompt notice in writing of the Claim. Licensor may not settle any infringement claim that will affect Licensee's use of the Licensed Software without Licensee's prior written consent, which consent may be withheld for any reason.

Limitation of Liability	In no event shall Licensor's liability under this Agreement exceed the actual amount paid to the Licensor during the last six (6) months prior to the incident giving rise to the claim	In no event shall either party be liable to the other for indirect, incidental, special, or consequential damages arising out of this Agreement for the existence, furnishing, functioning, or Customer's use of the work product, documentation, or tools provided by the Supplier. The foregoing limitations of liability shall not apply to (i) claims for damages for personal injury or wrongful death; (ii)claims for damages for which Suppiler has indemnified Customer; (iii) claims against Supplier for the presence of Illicit Code and (iv) claims by Customer pursuant to Confidential Information of Customer, Promotional Materials and Advertising, Remedies, and Survival.
IP Indemnificaiton & Force Majeure	Licensee will indemnify, defend, and hold harmless Licensor from any and all claims, losses, liabilities, damages, fees, expenses and costs (including attorneys' fees, court costs, damage awards, and settlement amounts) which result from any claim or allegation against the Licensor arising from Licensee's use of the Software or its breach of any term of this Agreement.	IP INDEMN: Supplier agress it iwill at its sole cost and expense, defend, indemnify, and hold harmless the Indemnified Parties from and against all Claims, to the extent such Claims arise out of, result from, or are attributable to the actual or allegedinfringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by Supplier or its employees, subcontractors, consultants, representative, and agents; provided, however, Customer gives SUpplier prompt notice in writing of the Claim. Suppliers may not settle any infringement claim that will affect Customer's use of the Licensed Software without Customer's prior written consent, whcih consent may be withheld for any reason. ***THE STATE CANNOT INDEMNIFY Ref Opinions of the Atty General Vol 78, January 18, 1989
Confidentiality	Licensee may not disclose Confidential Information (CI) to any third party unless (i) Licensor has given its specific and express prior written approval, (ii) the disclosure is expressly allowed under this Agreement, or (iii) the disclosure is necessary to comply with a valid court order or subpoena. Licensee will protect Licensor's CI from unauthorized dissemination in the same manner as that party protects its own CI.	Licensor shall not use Confidential, Proprietary or Personally Identifiable Information ("Confidential Information") for any purpose other than the limited purposes set forth in a Services Supplement to this Agreement, and all related and necessary actions taken in fulfillment of the obligations thereunder. Customer agrees that, (a) it will not disclose any Confidential Information to Licensor except that which is necessary for the limited purposes set forth in a Services Supplement; (b) prior to disclosure, it will clearly mark all Confidential Information as such; and (c) it will not disclose or transmit any Personally Identifiable Information to Licensor without providing advance written notice of such disclosure or transmission. . Licensor shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents ("Representatives") who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes described in a Services Supplement to this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement. Licensor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation, whether physically or electronically. Licensor shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by Licensor on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Licensor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed by the State in writing. Licensor shall maintain all Confidential Information for a period of three (3) years from the date of termination of this Agreement, and shall thereafter return or destroy said Confidential Information as directed by the State in writing. Licensor' obligations as described in this section to not apply to information which is: (1) generally available to the public; (2) released by Customer without restriction; (3) independently developed or acquired by Licensor; (4) known to Licensor prior to receipt from Customer; or (5) revealed pursuant to court order or process of law. . Licensor will use reasonable efforts to give Customer notice of such order prior to disclosure.
Orders, Pricing, & Payment		Try to include the terms normally prepared for on a standard purchase order as governing & applicable. govern Either prohibit increases or cap increases at a set percentage each year for any annual payments (license or support). Subject increases to prior notice, negotiation and approval For support and maintenance price terms, negotiate the price of recurring annual support costs Payment terms should mirror state standard 30 days from a properly submitted invoice Payment trigger should be acceptance

Audits	Licensor may audit Licensee's use of the Software. Licensee shall cooperate with Licensor and provide reasonable assistance and access to information. Licensee shall pay within thirty (30) days of written notification any fees applicable to Licensee's use of the Software in excess of Licensee's license rights. If Licensee does not pay, Licensor can terminate Licensee's technical support, licenses and/or this Agreement.	*Upon forty-five (45) days written notice, Licensor may, at its own cost, audit the State's use of the Programs. Any such audit shall be limited to infomraiton reasonabbly necessary to allow Licensor to determine if the State's use of a Program is in the quantity and under the license type for which it is licensed. In performing the audit, Licensor shall provide adequate assurances of confidentiality, which may incldue the execution of a confidentiality Agreement acceptable to the State and Licensor, prior to conductin any such audit.The State shall cooperate with the Licensor and provide reasonable assistance and access to information. Licensor's audit shall not unreasonably disrupt the State's operations. The State shall pay withing thirty (30) days of written notification any fees applicable to the State's use of the Programs in excess of the State's license and/or this Agreement. The State agrees that Licensor shall not be responsible for any of the State's costs incurred in cooperating wiht the Licensor.*
Vendor Indemnification & Governing Law	IND: The Licensee hereby indemnifies and holds Licensor harmless from any claim, damages, penalty or fine as a result of the Licensee failing to comply with its obligations under this clause, including all legal costs incurred on an attorney and own client basis.	IND: First try to get the clause deleted. Second try this language to put the onus on the Contractor/Licensor: Licensor shall hold the State harmless and shall indemnify the State, its Agencies, officers and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees, for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officer, employees or subcontractors. If the first two fail, add as applicable under law, then make sure that the Governing Law is Wisconsin. GOV LAW: try to get Dane County and Wisconsin.
Entire Agreement	The Agreement constitutes the entire agreement between Vendor and the Client in respect of the subject matter of the Agreement.	Statement that the license and any supplementary documents are the entire understanding between parties List of all incorporated terms and documents in the order that each will apply if there is a dispute over the license No prior communications (written or verbal) are binding. Typically will include an order of precedence Ensure that all State documents (RFB, RFP, statement of work, specifications) are included and take precedence Where verbal commitments or statements have been made and the agency is relying on them, finalize in writing in the contract Avoid hyperlinked terms that may alter the terms of your license without your notice or agreement
Severabililty, Waivers, Assignent, Terminiation, Survivability (SWATS)	**Severability:** Statement that if any part of the license is found to be unenforceable, it can be severed from the agreement and the rest of the contract remains in place May include ability to replace severed provision with a similar provision that complies with applicable law **Waivers:** Language on waivers may state that if a party waives the enforcement of a license right or term once, that does not mean it will be waived in the future for similar breaches. **Assignment:** Licensor may assign without notice to or approval from the customer **Termination:** Identifies under what circumstances either party can terminate the agreement Cause, Convenience Typically written to allow the licensor to terminate with little to no notice to the customer **Survivability**Identifies the sections of the license that will survive as binding after the date of termination. Example: record ret: ention, confidentiality, IP rights	**Severability:** Where language includes replacement with new language, reserve right to negotiate new term **Waivers:** Must be mutual rights ***Assignment*** *. . The* *Licensor shall provide prior written notice to the State before assigning this Contract to another party, except that Licensor may assign this Agreement to a parent, a wholly owned subsidiary or an affiliate, or a surviving entity in a statutory merger, consolidation, or reorganization, or any entity which acquires all or substantially all the assets of Licensor without notice. The Licensee (State) reserves the right to withhold approval of any such assignment. The terms and conditions of this Contract as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties.* **Termination:** Must be mutual rights, written and advance notice, right to cure problems **Survivability:** Ensure protections the State needs are included, such as protection of state data
Support and Maintenance	Licensee has elected to commit to paying maintenance and subject to the terms of this Agreement, the license granted to Licensee will become a perpetual license to use the Software provided that (a) a Maintenance Fee is paid upon Delivery of the Software, and (b) this fee is paid on the anniversary date of the Agreement and annually thereafter for a minimum of two (2) years. The Maintenance Fee is calculated as follows: the first Maintenance Fee is calculated at twenty-five percent (25%) of the purchase price under this Agreement and annually thereafter twenty-five (25%) of the then-current list price.	Some things to consider: The State should have the right to drop maintenance if we choose to use the license, especially if it is a perpetual license. Payment for support and maintenance should be the effective date of when the licenses were implemented not the anniversary date.

Antitrust Assignment	By entering into this Agreement, Vendors conveys, sells, assigns and transfers to the Client all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the Client, relating to the particular Goods or Services purchased or acquired by the Client under this Agreement.	*By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the State all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular Goods or Services purchased or acquired by the State under this Contract.*
Promotional Materials and Advertising	Vendors may have a clause that states they can advertise on their website that they are partners with the State of Wisconsin or the specific agency.	Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Agreement shall not be made without prior written approval of the State. Notwithstanding the foregoing, Contractor may identify the State of Wisconsin as a customer in its annual report.
Viruses, Disabling Devices and Illicit Code		*Licensor represents, warrants, and covenants that the licensed software and all software upgrades shall not contain any disabling devices or Induced Inhibiting Code (IIC) (as defined below), and Licensor shall not electronically repossess programs licensed to you through remote command activation. Licensor shall use all commercially reasonable measures to screen the licensed Software to avoid introducing any virus or other destructive programming that is designed (i) to permit unauthorized access or use by third parties to the software installed on your systems, or (ii) to disable or damage your systems. Licensor shall not insert into licensed Software any code or other device that would have the effect of disabling or otherwise shutting down all or any portion of the licensed Software based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or numbers or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Licensor to access the licensed software to cause such disablement or impairment (sometimes referred to as a "trap door" device). Licensor shall not invoke such code or other device at any time, including upon expiration or termination of this Contract for any reason. For the purpose of this section, a "Disabling Device" shall mean code intentionally embedded in a Program by Licensor for the sole purpose of partially or completely halting use of the Program on conditions set by Licensor. "IIC" is defined as any deliberately included application or system code that shall degrade performance, result in inaccurate data, deny accessibility, or adversely effect, in any way, programs or data or use of the system.*
Additionl Terms (Click through, Shrink Wrap, Hyperlinks		*No "Shrink-Wrap," "Click-Wrap" or other terms and conditions or Agreements ("Additional Terms") unilaterally provided with any products or software hereunder shall be binding on the State, even if use of such products and software requires an affirmative "acceptance" of those "additional terms" before access is permitted. All such additional terms shall be of no force or effect and shall be deemed rejected by the State in entirety.* *In the event of a conflict between the terms of the Vendor Software License Agreements, Service Agreements or linked or supplemental documents and the Contract which amend or diminish the rights of DIR Customers or the State provided for in the Contract, such conflicting terms shall not take precedence over the terms of this Contract. In no event will any linked document alter or override any term of the Contract, nor will it change fees, prices, or the method of computing any of the foregoing.*

License Fee Changes or Increses		Detail how payment is going to be made, is implementation included, are there going to be progress payments, or will licenses be paid for upfront for 12 months? If a multi year contract, how much can the vendor increase the costs of the licenses each year? **Fee Cap**. Upon expiration of the Initial Term and for each renewal Term thereafter, the License fee and Support fee Fees as applicable for each Renewal Term may not increase by more than two percent (2%) over the cost of the previous term. For the avoidance of doubt, License Fees (if any) and Support fees for each Renewal Term must be communicated by MagicOrange to Client at least ninety (90) days prior to expiration of the then current Term and may not be increased for twelve (12) months following such LicenseServices fFees or Support fees going into effect. Notwithstanding anything contained in this Agreement or otherwise to the contrary, MagicOrange may not increase fees more than once per calendar year, and Licensee shall have the right to terminate this Agreement by providing written notice within 30 days from the date of receipt of the written notice of the Ffee increase.
Acceptance Testing Benchmarks		This should be worked out with the program area and IT. In the contract have milestones based on these benchmarks and tie payments to the acceptance testing benchmarks.
Web Content Accessibility Guidelines	May not be in Vendor/Contractor/Licensor's agreement yet	*Web Content Accessibility Guidelines* *•Contractor shall comply with the Americans with Disabilities Act (ADA) in a manner consistent with the W3C Web Content Accessibility Guidelines (WCAG), version 2.1 ("WCAG 2.1"), at conformance levels A and AA for all Products and Services provided under the Master Contract.* *•If during the Term of the Master Contract, the Contractor fails to maintain compliance with WCAG 2.1 A and AA, or the State of Wisconsin identifies an accessibility barrier in the product or service that renders it inaccessible or unusable to people with disabilities, the State of Wisconsin shall notify the Contractor of non-compliance. If conformance is not reached within 30 days of the Contractor receiving the notification of non-compliance ("Notice"), the Contractor and the State of Wisconsin shall meet and mutually agree upon an appropriate timeline for resolution of the accessibility barrier(s). Should Contractor: (i) fail to acknowledge receipt of the notice within 30 days of receipt of the Notice, or (ii) fail to materially resolve the accessibility barrier(s) within the agreed-upon timeline, Contractor agrees to indemnify and hold harmless the State of Wisconsin from any claims arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements throughout the Contract term may be grounds for cancellation of the Master Contract by the State of Wisconsin.* *•The State of Wisconsin may also require the Contractor to provide an Accessibility Conformance Report (ACR) or Voluntary Product Accessibility Template (VPAT) upon request to demonstrate compliance with this requirement.*
Artifical Intelligence	May not be in Vendor/Contractor/Licensor's agreement yet	Limit the amount of AI allowed on the contract. No generative AI. Be very cautious until DET develops an AI policy.
Data Location	Licensee will host the purchased instances in data centers located in the geographic region specified on the Order Form which have attained SSAE 18 Type 2 attestations or have ISO 27001 certifications (or equivalent or successor attestations or certifications).	All of the items on the certification plus all data, either stored or in transit, must be within the Continental United States as well as their back up locations.
Data Breach		Any anctual or reasonably suspected non-authorized access to or acquisition of computerized Non-Public Data or Personal Data that compromises the security, conficentialty\, or integrity of the Non-Public Data or Personal Data, or the ability of Purchasing Entity to access the Non-Public Data or Personal Data
Data Privacy		The service provider must comply with all applicable laws related to data privacy and security, including IRS Pub 1075. Prior to entering into a SLA with a Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine the Data Categorization to determin whether the Contractor will hold, store, or process High Risk Data, Moderate Risk Data, and Low Risk Data. Teh Contractor must documetn the Data Categorization in the SLA or Statement of Work.

Use of Product	Watch out for limitations on how a license can be utilized. May limit the number of connections with Application Programming Interface's (API) or connections to other software. Could be limited to specific locations or IP addresses.	Use of product typically defines the permitted ways a product can be utilized, restricting activities like resale or misuse, and clarifying ownership of any "work product" created under a contract. These clauses specify limitations, such as for life support or unlawful purposes, and can include restrictions on combining the product with other systems, outlines the buyer's responsibility in specific high-risk applications. The clause is designed to prevent misuse, protect intellectual property, and manage liability for both the provider and the user. Key aspects of "use of product" clauses Permitted uses: Clearly states how the product is allowed to be used, such as for personal, commercial, or internal business purposes. Prohibited uses: Lists activities that are not allowed, such as resale, reverse engineering, or using the product in high-risk applications like life support or nuclear technology. User responsibilities: Outlines the user's duties and responsibilities, such as not selling counterfeit merchandise on a website. Intellectual property: Defines ownership of the product and any "work product" (e.g., documents, code) created during the contract. Safety and liability: Includes provisions to protect the manufacturer from liability in cases of misuse, especially in high-risk applications. Exclusive vs. non-exclusive use: Some clauses may grant exclusive rights to use the product, while others may specify that the rights are non-transferable.
Agency specific requirements		Should have been included in the solicitation or in the request for using the NASPO contracts. If not, these should be spelled out in the Statement of Work and include IT staff.
Service Level Agreements (SLAs)		"Service Level Agreement" or "SLA" means a written agreement between the State and the Contractor that is subject to the terms and conditions in this document that unless otherwise agreed to includes but is not limited to (1) the technical service level performance promises (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.