Minnesota Board
of Peace Officer
Standards and Training

1600 University Avenue, Suite 200
St. Paul, MN 55104-3825
(651) 643-3060 • Fax (651) 643-3072
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October 3, 2023

Representative Kelly Moller, Chair, Public
Safety Finance and Policy Committee
rep.kelly.moller@house.mn.gov

Senator Ron Latz, Chair, Senate Judiciary and
Public Safety Committee
sen.ron.latz@senate.mn

Representative Paul Novotny, Public Safety
and Finance and Policy Committee
rep.paul.novotny@house.mn.gov

Senator Warren Limmer, Senate Judiciary and
Public Safety Committee
sen.warren.limmer@senate.mn

Subject: Interagency Agreements and Intra-Agency Transfers

In accordance with Minnesota Laws of 2017, First Special Session, Chapter 4 Article 2 Section 16 and M.S. 15.0395, attached is the specified list of FY2023 interagency and intra-agency transfers, and copies of the required agreements.

Please do not hesitate to contact me at 651-201-7789 or email erik.misselt@state.mn.us with questions.

Sincerely,

Erik Misselt
Executive Director
Minnesota Board of Peace Officer Standards and Training

Attachments

cc: Legislative Reference Library

Peace Officer Standards and Training (POST) Board
Fiscal Year 2023 Interagency Agreements and Service-Level Agreements
October 15, 2023

Agency	Amount	Legal Authority	Purpose	Effective Date	Duration
Administration	$ 103,000	MS 16B.371	Admin to provide SmART services	7/1/2022	through FY23
Total	**$103,000.00**				

Peace Officer Standards and Training (POST) Board
Fiscal Year 2023 Transfers
October 15, 2023

TRANSFER FROM					TRANSFER TO						
Transfer Out Agency	Transfer Out Fund Name	Transfer Out AppropID	Transfer Out AppropID Name	Transfer Out Amt	Transfer In Agency	Transfer In Fund Name	Transfer In AppropID	Transfer In AppropID Name	Transfer In Amount	Purpose of Transfer	Legal Authority for Transfer
POST	1000-General	P7T1100	POST Board Operations	-$200,000.00	MNIT	2001-Other Misc Special Revenue	G467386	ITA24.086 P7T Misconduct Sys	$200,000.00	Misconduct Reporting System ITA24.086	MS 16E.21
TOTAL				-$200,000.00					$200,000.00		

BENCHMARK ANALYTICS® SOFTWARE AS A SERVICE AGREEMENT

Benchmark Solutions LLC DBA Benchmark Analytics LLC ("Benchmark") 4619 N. Ravenswood Avenue Suite 203 Chicago, IL 60640 support@benchmarkanalytics.com	This Software as a Service Agreement "Agreement" is not valid until accepted and signed by an authorized representative of Benchmark in Chicago, Illinois. Effective Date: _Upon date of final signature_____
Client Information	
Client: State of Minnesota, Office of MN.IT Services, for and on behalf of the Minnesota Board of Peace Officer Standards and Training Address: 658 Cedar St., St. Paul, MN 55155	Contact: Title: Telephone: Email:

I.   Subscription Fees:

Annual subscription fees ("Fees"), inclusive of integrations noted in Section III below, shall be in the amount of $275,000 for year 1 of the Term. Pricing for the subsequent Years 2 and 3 of any renewals shall be as follows:

<div align="center">

Year 2: $240,000.00

Year 3: $280,000.00

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Fees are subject to an annual increase up to 2% in each year subsequent to year 3 of the Term. Client shall pay Fees for year 1 of the Term within 30 days from the effective date set forth above (the "Effective Date") and shall pay Fees for each subsequent year of the Term on or before the subsequent anniversary of the Effective Date. Notwithstanding the foregoing, the Parties agree that purchases of software subscriptions, if any, will be purchased through an authorized reseller under a State of Minnesota contract, and any payments will be made directly to the authorized reseller, subject to reseller markup, and not the Licensor.

II.   Service Level Specifications:

III.   Additional Terms:

1.   **Access and Use**. Benchmark has developed a software application designed for its clients' personnel to enter, manage, track, report and analyze various law enforcement-related information and to perform other incidental and subsidiary functions, known as "Benchmark Analytics" (the "Services"). Subject to and conditioned on Client's payment of Fees and compliance with all other terms and conditions of this Agreement, Benchmark hereby grants Client a non-exclusive, non-transferable right to access and use the Services indicated below, during the Term, solely for use by Client's administrators, employees and other Client-authorized persons or entities ("Users") in accordance with the terms and conditions herein and any additional terms applicable to Users. Such use is limited to Client's internal use. Benchmark shall provide to Client the necessary passwords, security codes and network links or connections to allow Client to access the Services ("Access Credentials").
     - Internal complaint and case management tracking system
     - Internal Affairs data submission portal
     - Officer Database

2.   **Term**. The initial term of this Agreement shall be for one (1) year from the Effective Date (the "Initial Term"), unless terminated earlier pursuant to this Agreement's express provisions, and Client shall have the option to renew for subsequent one (1) year terms (collectively the "Term"), at pricing pursuant to section I of this Agreement.

3.   **Restrictions**.
     a.   Client may only use the Services strictly in accordance with (1) all applicable laws, including without limitation, employment laws and data privacy and security laws, (2) the supporting materials ("User Materials") provided by Benchmark, and (3) any other restrictions and requirements set forth herein. Client agrees that while the Services and the reports generated for Client ("Client Reports") may be used by Client in employment-related matters, they are not designed to be, nor shall they be, utilized as the substantial or sole factor in any employment-related decisions and are only designed to provide information to Client. Benchmark shall not be responsible for Clients' or its Clients' employees' use of the Services or any Client Reports generated by the Service. All employment-related decisions of Client, including without limitation the termination or discipline of any employee of Client, and Client's use of the Services, is at the sole discretion and responsibility of Client, and Benchmark shall have no responsibility whatsoever for any such decisions. In no event shall Benchmark be required to monitor or supervise the use of the Services by Client or any authorized users and compliance with the terms of this Agreement by all authorized users shall at all times be and remain the Client's sole responsibility.
     b.   Client shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Client shall not at any time, directly or indirectly, permit any Users or any third-party to: (i) copy, modify, or create derivative works of the Services or User Materials, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or User Materials; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or User Materials, misappropriates, or otherwise violates any intellectual property (IP) right or other right of any person, or that violates any applicable law; or (vi) use the Services or User Materials for the purpose of creating any competing or similar service or software.

4.   **Intellectual Property**.
     a.   Benchmark acknowledges that, as between Benchmark and Client, Client owns all right, title, and interest, including all intellectual property rights, in and to information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Client or a User through the Services ("Client Data"). Client hereby grants to Benchmark a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Client Data and perform all acts with respect to the Client Data as may be necessary for Benchmark to provide the Services to Client..
     b.   Client acknowledges that, as between Client and Benchmark, Benchmark and its licensors own all right, title, and interest, including all intellectual property rights, in and to the Services, all underlying software for the Services, the User Materials, and any and all intellectual property provided to Client or any User in connection with the foregoing, including, without limitation, Aggregated Statistics and any information, data, or other content derived from Benchmark's monitoring of Client's access to or use of the Services ("Benchmark IP"). For the avoidance of doubt, Benchmark IP excludes Client Data.

5.   **Aggregate Statistics**. Notwithstanding anything to the contrary in this Agreement, Benchmark may monitor Client's use of the Services and collect and compile data and information related to Client's use of the Services that is used by Benchmark in an aggregate and anonymized manner, including, but not limited to, compilation of statistical and performance information related to the provision and operation of the Services ("Aggregated Statistics"). Client acknowledges that Benchmark may compile Aggregated Statistics based on Client Data input into the Services; provided, that such Aggregated Statistics do not identify Client or Client's Confidential Information.

6. **Support Services.** Benchmark shall provide a customer support number for client. The customer support line may be accessed through a toll-free telephone number (1-888-40-BENCH) or via e-mail (support@benchmarkanalytics.com) and will be available Monday through Friday 8:00AM – 6:00PM (CST), excluding all federal holidays. In the event of a system wide outage, the client shall be provided with a 24-hour hotline for immediate response.

7. **Client's Obligations**.
   a. Client is responsible and liable for all uses of the Services and User Materials resulting from access provided by Client, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Client is responsible for all acts and omissions of Users, and any act or omission by a User that would constitute a breach of this Agreement if taken by Client will be deemed a breach of this Agreement by Client. Client shall make all Users aware of this Agreement's provisions as applicable to such User's use of the Services, and shall cause Users to comply with all such provisions. For the avoidance of doubt, the Client's liability Is governed by the Minnesota Tort Claims Act, Minnesota Statutes section 3.736.
   b. Client understands and agrees that (i) Client is responsible for obtaining and installing all software and/or hardware upgrade, fixes, or enhancements required by the applicable browser software; and (ii) that Benchmark is not responsible for any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited, to the Internet.
   c. Client shall be responsible for: (i) securely administering the distribution and use of all Access Credentials and protection against any unauthorized access to or use of the Services; and (ii) controlling the content and use of Client Data, including the uploading or other provision of Client Data to or through the Services and the accuracy thereof. Client shall immediately notify Benchmark if Client becomes aware of any loss or theft or unauthorized use of any Access Credentials.
   d. Client shall immediately notify Benchmark if it becomes aware that the Services, or Client's use of the Services, violates or potentially violates any applicable laws.
   e. Client is solely responsible for maintaining the confidentiality of Client's user name(s) and password(s

8. **Mutual Obligations.** "Confidential Information" means any information that Is protected from disclosure under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, which may include the following: (a) for Benchmark, all information relating to its business affairs, products, technology (including, but not limited to, source code, research and/or analytics), confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information; and (b) for Client, the identities of its Users, records of interactions with the Users, and Client Data (including, but not limited to, information regarding Client's employees). Neither party shall disclose any Confidential Information of the other party to any person or entity, except to those of its employees or contractors who require access to it in order for the party to be able to perform its obligations under this Agreement, and who are bound by confidentiality obligations consistent with the terms of this Section, and except to the extent otherwise permitted by the licenses granted in Sections 5 The receiving party shall be responsible and liable for compliance with this Section by its employees and contractors. This Section does not apply to any information that (i) becomes generally publicly available other than as a result of improper disclosure by the receiving party; (ii) is independently developed by the receiving party without use of the Confidential Information of the disclosing party; (iii) becomes available on a non-confidential basis from a third-party that is not bound by confidentiality; or (iv) is known to the receiving party at the time of disclosure. To the extent required by any applicable law, regulation, or order of any court or governmental body, disclosure of Confidential Information is not a breach of this Agreement; provided, that the party required to disclose it (a) promptly, and prior to such disclosure, notifies the other party so that it can seek a protective order or other remedy, and (b) prior to any disclosure, asserts the confidential nature of the Confidential Information.

9. **Indemnification.** Benchmark shall indemnify, defend, to the extent permitted by the Minnesota Attorney General, and hold harmless Client from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("Losses") incurred by Client resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third-party's valid U.S. patent or copyright, provided that Client promptly notifies Benchmark in writing of the claim, cooperates with Benchmark, and allows Benchmark sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Client agrees to permit Benchmark, at Benchmark's sole discretion, to (i) modify or replace the Services, or component or part thereof, to make it non-infringing, or (ii) obtain the right for Client to continue use. This Section will not apply to the extent that the alleged infringement arises from: (i) use of the Services in combination with data, software, or technology not provided by Benchmark or authorized by Benchmark in writing; (ii) modifications to the Services not made by Benchmark; (iii) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Client by or on behalf of Benchmark; or (iv) Client Data or any other Client materials. THIS SECTION SETS FORTH CLIENT'S SOLE REMEDIES AND BENCHMARK'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD-PARTY.

10. **Limited Warranty; Disclaimer of Warranties**.
    a. Benchmark warrants that the Services will substantially perform according to written functional specifications provided by Benchmark from time to time.
    b. THE SERVICES AND BENCHMARK IP ARE PROVIDED "AS IS" AND BENCHMARK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. BENCHMARK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS STATED IN SECTION 9, BENCHMARK MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES AND BENCHMARK IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

11. **Limitation of Liability**. IN NO EVENT WILL BENCHMARK BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) DAMAGES OF ANY NATURE WHATSOVER IN CONNECTION WITH, RELATED TO OR ARISING OUT OF ANY TERMINATION OR DISCIPLINE OF A CLIENT EMPLOYEE, OR ANY CLIENT EMPLOYMENT-RELATED MATTER, (c) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (d) LOSS OF GOODWILL OR REPUTATION; ; OR (f) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER BENCHMARK WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL BENCHMARK'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED $250,000.

12. **Time to File Claims**.

13. **Termination**.
    a. In addition to any other express termination right set forth in this Agreement, this Agreement may be terminated as follows: by Benchmark, if Client is in breach of any payment obligation contained in this Agreement and fails to cure such breach within ninety (90) days written notice of such breach by Benchmark; or by either party, if the other party is in material breach of any other provision of this Agreement (other than Client's obligation to pay Fees), by written notice to the other party effective sixty (60) days after the receipt of such notice unless the other party cures such breach within the sixty (60) day. In addition, Benchmark may terminate this Agreement immediately upon notice to Client in the event Client breaches its obligations under Section 4 above. Upon expiration or earlier termination of this Agreement, (i) Client shall immediately discontinue use of the Benchmark IP and, without limiting Client's obligations under Section 8, Client shall delete, destroy, or return all copies of the Benchmark IP; and (ii) Benchmark may immediately deactivate Client's account, and, after providing Client with ninety (90) days limited access to the Services for the sole purpose of permitting Client to retrieve Client Data, delete Client's account and bar any further access to such information and the Services. Client understands and agrees that Benchmark is not liable to Client, its Users, or any third-party for any termination of Client's access to the Services or deletion of Client Data or any other data of any kind.
    b. This Section 13, and Sections 3, 4, 5, 8, 9, 10, 11,12, 13 and 15 through 22 of Article III will survive any termination or expiration of this Agreement.

14. **Public Disclosure**. [Reserved] .

15. **Severability**. Each paragraph and provision of this Agreement is severable from the entire Agreement, and, if one provision is declared invalid, the remaining provisions shall remain in effect and the invalid provision shall be reformed and amended to the extent needed to be valid.

16. **Force Majeure**. In no event shall Benchmark be liable to Client, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Benchmark's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

17. **Taxes**. Fees do not include any local or state sales, value added, use or other applicable excise taxes now in force or enacted in the future, any assessment of which shall be paid by Client. Without limiting the foregoing, Client shall promptly pay to Benchmark any amounts actually paid or required to be collected or paid by Benchmark pursuant to any statute, ordinance, rule or regulation of any legally constituted taxing authority.

18. **Entire Agreement; Amendment; Waiver**. This Agreement supersedes all prior agreements and understandings between Client and Benchmark, including any representations, expressed or implied. Client acknowledges that this Agreement may not be changed or terminated orally. No change, termination or attempted waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by an authorized representative of the party against who the same is sought to be enforced. The parties, each acting under proper authority, have signed this Agreement on the date indicated below. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

19. **Notices**. Any notices required or permitted under this Agreement shall be in writing and shall be effective when delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed, or by personal courier to the address set forth in this Agreement or any more recent address to which the sending party has been apprised.

20. **Relationship of the Parties**. Benchmark and Client are independent contractors. Neither party shall make any contracts, warranties, representations, or assume or create any other obligations, whether express or implied, in the other party's name or on its behalf.

21. **Assignment**. Neither party may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party, and fully executed assignment agreement. Any purported assignment of rights in violation of this Section is null and void.

22. **Third-party Beneficiaries**. This Agreement does not and is not intended to confer any rights or remedies upon any person or entities other than Benchmark and Client.

BY SIGNING BELOW, EACH PARTY CERTIFIES THAT IT HAS READ AND AGREES WITH AND SHALL BE BOUND BY THE TERMS HEREOF.

Client:

Signature: _Tracy Gerasch_

Name: Tracy Gerasch

Title: Procurement Director

Date: 1/28/2022

Benchmark Solutions USA, DBA Benchmark Analytics LLC

Signature: _Ron Huberman_

Name: Ron Huberman

Title: CEO

Date: 1/27/2022