

STATE OF



**State of Iowa**

Response to RFP1219005003 —  
Redlined General Terms and Conditions for  
Service Contracts

Prepared by Sedgwick | November 2018



sedgwick.

**iowa.gov**



## SECTION 6 CONTRACT TERMS AND CONDITIONS

### 6.1 Contract Terms and Conditions

The Contract that the Agency expects to award as a result of this RFP shall comprise the specifications, terms and conditions of the RFP, written clarifications or changes made in accordance with the provisions of the RFP, the Terms and Conditions attached hereto, the offer of the successful Contractor contained in its Proposal, and any other terms deemed necessary by the Agency. No objection or amendment by a Contractor to the provisions or terms and conditions of the RFP or the Terms and Conditions shall be incorporated into the Contract unless Agency has explicitly accepted the Contractor's objection or amendment in writing.

The Contract terms and conditions in this Section 6 and the Terms and Conditions will be incorporated into the Contract. The Terms and Conditions may be supplemented at the time of contract execution and are provided to enable Contractors to better evaluate the costs associated with the RFP specifications and the Contract. All costs associated with complying with these specifications should be included in any pricing quoted by the Contractor.

By submitting a Proposal, Contractor acknowledges its acceptance of the terms and conditions of the RFP and the Terms and Conditions without change except as otherwise expressly stated in its Proposal. If the Contractor takes exception to a provision, it must identify it by page and section number, state the reason for the exception, and set forth in its Proposal the specific RFP or Terms and Conditions language it proposes to include in place of the provision. If Contractor's exceptions or proposed responses materially alter the RFP, or if the Contractor submits its own terms and conditions or otherwise fails to follow the process described herein, the Agency may reject the Proposal, in its sole discretion.

The Agency reserves the right to either award a Contract(s) without further negotiation with the successful Contractor or to negotiate Contract terms with the successful Contractor if the best interests of the State would be served.

Please note Sedgwick's redlined edits to the State's proposed terms and conditions. All exceptions/requested revisions are listed in section 3.2.8 of the technical proposal.

### 6.2 Special Terms

Proposed State of Iowa Security Terms & Conditions are attached.

### 6.3 Contract Length

The term of the Contract will begin and end on the approximate dates indicated on the RFP cover sheet. The Agency shall have the sole option to renew the Contract upon the same or more favorable terms and conditions for up to the number of annual extensions identified on the RFP cover sheet.



## 6.4 Insurance

The Contract will require the successful Contractor to maintain insurance coverage(s) in accordance with the insurance provisions of the Terms and Conditions and of the type and in the minimum amounts set forth below, unless otherwise required by the Agency.

Type of Insurance	Limit	Amount
General Liability (including contractual liability <b>and Broad Form Property Damage</b> ) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	\$2 million \$1 Million \$1 Million \$1 Million
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence Aggregate	\$1 Million \$1 Million
Errors and Omissions Insurance	Each Occurrence	\$1 Million
<b>Property-Damage</b>	<del>Each Occurrence</del> <b>Aggregate</b>	<del>\$1 Million</del> <b>\$1 Million</b>
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law

Please note the above redlined edits; Sedgwick has property damage coverage under our general liability policy.

## 6.5 Terms and Conditions for State of Iowa Purchasing Cards

The State of Iowa shall pay Contractor’s invoices using its Purchasing Card Program (Pcard) whenever possible. The Pcard is a VISA credit card issued by U.S. Bank to allow authorized employees to make purchases on behalf of the State. It is a faster, more convenient alternative to traditional invoicing and remittance processing, allowing US Bank to pay the Contractor directly, generally within 48 hours of the transaction. Contractor shall comply with security measures for Pcard payments including:

- Contractor shall comply with Payment Card Industry Data Security Standard (PCI DSS) to assure confidential card information is not compromised;
- Contractor shall adhere to Fair and Accurate Credit Transactions Act requirements that limit the amount of consumer and account information shared for greater security protection;
- Contractor shall not write down card numbers or store card information. When accepting orders by phone, Contractor shall process the transaction during the call and send itemized receipts (excluding card numbers) to the cardholder by fax, email, or mail (with delivery);
- Contractor shall process payment for items when an order is placed only for items currently in stock and available for shipment, and only for services already rendered;



- **Contractor shall confirm that the name of purchaser matches the name on the card;**
- **Contractor shall ensure Internet orders are processed via secure websites, featuring Verisign, TRUSTe, BBBOnline, or "https" in the web address;**
- **Contractor shall shred any documentation with credit card numbers.**

Section 6.5 is not applicable for the services provided by Sedgwick. Sedgwick accepts the following payment methods: checks, Electric Funds Transfer (EFT) by Automated Clearing House (ACH), and wire transfers.





## State General Terms and Conditions for Service Contracts/Solicitations Effective 5/1/2016

Please note Sedgwick's redlined edits to the State's proposed terms and conditions. All exceptions/requested revisions (including reason for change) are listed in section 3.2.8 of the technical proposal.

### 1.1 Definitions

The following words shall be defined as set forth below:

**"Acceptance"** means that the Agency has determined that one or more Deliverables satisfy the Agency's Acceptance Tests. **Final Acceptance** means that the Agency has determined that all Deliverables satisfy the Agency's Acceptance Tests. **Non-acceptance** means that the Agency has determined that one or more Deliverables have not satisfied the Agency's Acceptance Tests.

**"Acceptance Criteria"** means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Agency and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

**"Acceptance Tests"** or **"Acceptance Testing"** mean the tests, reviews and other activities that are performed by or on behalf of Agency to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.

**"Bid Proposal"** or **"Proposal"** means the Contractor's proposal submitted in response to the RFP.

**"Contract"** means the collective documentation memorializing the terms of the agreement between the Agency and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s), the Special Terms, these General Terms for Services Contracts, any Special Contract Attachments, and all other attachments to the Contract Declarations & Execution Page(s).

**"Contract Declarations & Execution Page(s)"** means the document that contains basic information about the Contract and incorporates by reference these General Terms for Services Contracts, the Special Terms, and all other attachments to the Contract Declarations and Executions Page(s).

**"Deficiency"** means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

**"Deliverables"** means all of the goods, products, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Contractor (or any agent, contractor or subcontractor of Contractor) in connection with this Contract.

**"Documentation"** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

**"RFP"** means the Request for Proposals or Request for Bids (and any Addenda thereto) identified on the Contracts Declarations and Execution Page(s) that was issued to solicit the Deliverables that are subject to the Contract.



**“Special Contract Attachments”** means any attachment to this Contract indicated on the Contract Declarations & Execution Page(s).

**“Special Terms”** means the Contract attachment entitled “Special Terms” that contains terms specific to this Contract, including but not limited to the Scope of Work, contract payment terms, and any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms for Services Contracts and the Special Terms, the Special Terms shall prevail.

**“Specifications”** means all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the RFP, and the Proposal. Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

**“State”** means the State of Iowa, the Agency, and all State of Iowa agencies, boards, and commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

## **1.2 Availability of Contract to Other Entities**

All other agencies of the State of Iowa and all political subdivisions of the State of Iowa may make purchases pursuant to the Contract as permitted by the Competitive Bidding Document.

## **1.3 Duration of Contract**

The term of the Contract shall begin and end on the dates specified on the Contract Declarations & Execution Page(s), unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Agency may, in its sole discretion, exercise any applicable extension by giving the Contractor written notice of the extension decision at least sixty (60) days prior to the expiration of the initial term or renewal term.

## **1.4 Scope of Work**

The Contractor shall provide Deliverables that comply with and conform to the Specifications.

## **1.5 Compensation**

### **1.5.1 Pricing**

The Contractor will be compensated in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work described in the Special Terms.

The Contractor shall submit, on the frequency established on the Contract Declarations & Execution Page(s) an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall verify the Contractor’s performance of the Deliverables outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and in conformance with Iowa Code 8A.514. The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely



responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

#### **1.5.2 The State has established rules for limitations on reimbursement expenses**

Please reference Department of Administrative Services - State Accounting Enterprise Procedure 210-245 (accessible on the internet) for limits on travel expenses.

#### **1.5.3 Withholding Payments**

In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Contractor, in whole or in part, without penalty to the Agency or work stoppage by Contractor, in the event the Agency determines that:

**1.5.3.1 Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or**

**1.5.3.2 Any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency.**

No interest shall accrue or be paid to Contractor on any compensation or other amounts withheld or retained by the Agency under this Contract.

#### **1.5.4 Setoff Against Sums Owed by the Contractor**

In the event that Contractor owes the State any sum under the terms of this Contract, any other contract or agreement, pursuant to a judgment, or pursuant to any law, the State may, in its sole discretion, set off any such sum against:

**1.5.4.1 Any sum invoiced by, or owed to, Contractor under this Contract, or**

**1.5.4.2 Any sum or amount owed by the State to Contractor, unless otherwise required by law.**

The Contractor agrees that this provision constitutes proper and timely notice under any applicable laws governing setoff.

## **1.6 Termination**

#### **1.6.1 Immediate Termination by the State**

The State may terminate this Contract for any of the following reasons effective immediately without advance notice:

**1.6.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;**

**1.6.1.2 The State determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;**

**1.6.1.3 The Contractor fails to comply with confidentiality laws or provisions;**

**1.6.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.**

#### **1.6.2 Termination for Cause by the Agency**



The Agency may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- 1.6.2.1 Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- 1.6.2.2 Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 1.6.2.3 Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- 1.6.2.4 Contractor terminates or suspends its business;
- 1.6.2.5 Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- 1.6.2.6 Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- 1.6.2.7 The Agency determines or believes the Contractor has engaged in conduct that:
  - (a) has or may expose the Agency or the State to material liability, or
  - (b) has caused or may cause a person's life, health or safety to be jeopardized;
- 1.6.2.8 Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
- 1.6.2.9 Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- 1.6.2.10 Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:
  - 1.6.2.10.1 Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or





taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

- 1.6.2.10.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- 1.6.2.10.3 Making an assignment for the benefit of creditors;
- 1.6.2.10.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or
- 1.6.2.10.5 Taking any action to authorize any of the foregoing. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

### 1.6.3 Termination upon Notice

Following thirty (30) days written notice, the Agency may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all.

### 1.6.4 Termination Due to Lack of Funds or Change in Law

Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

- 1.6.4.1 The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
- 1.6.4.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or
- 1.6.4.3 If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or
- 1.6.4.4 If the Agency's duties, programs or responsibilities are modified or materially altered; or
- 1.6.4.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract. The Agency shall provide Contractor with written notice of termination pursuant to this section.



### **1.6.5 Limitation of the State's Payment Obligations**

**In the event of termination of this Contract for any reason by either party (except for termination by the Agency pursuant to Section 1.6.2), the Agency shall pay only those amounts, if any, due and owing to Contractor hereunder for Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the Agency is obligated to pay pursuant to this Contract; provided however, that in the event the Agency terminates this Contract pursuant to Section 1.6.4, the Agency's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section 1.6.5 in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:**

**1.6.5.1 The payment of unemployment compensation to Contractor's employees;**

**1.6.5.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;**

**1.6.5.3 Any costs incurred by Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;**

**1.6.5.4 Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract;**

**1.6.5.5 Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.**

### **1.6.6 Contractor's Termination Duties**

**Upon receipt of notice of termination or upon request of the Agency, Contractor shall:**

**1.6.6.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Agency may require.**

**1.6.6.2 Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.**

**1.6.6.3 Cooperate in good faith with the Agency and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.**

**1.6.6.4 Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor.**

**1.6.6.5 Immediately deliver to the Agency any and all Deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of**



development and form of recordation such property is expressed or embodied as that time.

#### **1.6.7 Termination for Cause by Contractor**

Contractor may only terminate this Contract for the breach by the Agency of any material term, condition or provision of this Contract, if such breach is not cured within sixty (60) days of the Agency's receipt of Contractor's written notice of breach.

### **1.7 Confidential Information**

#### **1.7.1 Access to Confidential Information**

The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Agency to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Agency. The Contractor shall provide to the Agency a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential information shall remain the property of the Agency at all times.

#### **1.7.2 No Dissemination of Confidential information**

No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. Any data supplied by the Agency to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Agency. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Agency. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

#### **1.7.3 Subpoena**

In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Agency and cooperate with the Agency in any lawful effort to protect the confidential information.

#### **1.7.4 Reporting of Unauthorized Disclosure**

The Contractor shall immediately report to the Agency any unauthorized disclosure of confidential information.

#### **1.7.5 If Contractor requests confidential treatment with respect to any information or material contained within its Bid Proposal and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. Agency may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Agency determines the information or material is not**



confidential under Iowa or other applicable law, or if Contractor failed to properly request confidential treatment under the RFP, or if Contractor rescinds its request for confidential treatment.

#### 1.7.6 Survives Termination

The Contractor's obligations under this section shall survive termination or expiration of this Contract.

### 1.8 Indemnification

#### 1.8.1 By the Contractor

The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

1.8.1.1 Any breach of this Contract;

1.8.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;

1.8.1.3 The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

1.8.1.4 Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;

1.8.1.5 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

#### **By the State.**

**The State shall, only to the extent consistent with and permitted by Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify the Contractor from and against any claim, as defined in Iowa Code Section 669.2, caused directly by the negligent or wrongful acts or omissions of any employee of the State while acting within the scope of the employee's office or employment in connection with the performance of this Agreement. Contractor agrees that any claim for which indemnification is sought pursuant to this Section 9.2 will be subject to the provisions of Iowa Code Chapter 669 and 543 Iowa Admin. Code 1, including, without limitation, those provisions which address the making and filing of claims. If the State makes any indemnity payments to the Contractor pursuant to this Section 9.2 and the Contractor thereafter collects or recovers all or a portion of such amounts from any person or third party, including from any insurance carrier, Contractor shall promptly repay such collected or recovered amounts to the State.**





### 1.8.2 Survives Termination.

Contractor's duties and obligations under this section shall survive the termination of this Contract and shall apply to all acts or omissions taken or made in connection with the performance of this Contract regardless of the date any potential claim is made or discovered by the Agency or any other Indemnified Party.

## 1.9 Insurance

### 1.9.1 Insurance Requirements

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals thereof. The Contractor's insurance shall, among other things, be occurrence based, ~~excluding Professional Liability~~, and shall insure against ~~any~~ loss or damage resulting from or related to the Contractor's performance of this Contract ~~regardless of the date the claim is filed or expiration of the policy~~. The State of Iowa and the Agency shall be ~~named~~ included as additional insureds or loss payees, ~~or the Contractor shall obtain an endorsement to the same effect~~, as applicable.

### 1.9.2 Types and Amounts of Insurance Required

Unless otherwise requested by the Agency in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor ~~and/or subcontractors~~ against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract Declarations and Execution Page for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

### 1.9.3 Certificates of Coverage

Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract and any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written ~~approval of~~ notice to the Agency in accordance with the policy provisions. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without ~~at least thirty (30) days' prior~~ written notice to the Agency in accordance with the policy provisions. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

### 1.9.4 Waiver of Subrogation Rights

The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

## 1.10 Project Management & Reporting

### 1.10.1 Project Manager

At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be

available to meet monthly, unless otherwise mutually agreed, to review and plan the Deliverables being provided under this Contract.

#### **1.10.2 Review Meetings**

During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

#### **1.10.3 Reports**

At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

**1.10.3.1** Any event not within the control of the Contractor or the Agency that accounts for the problem;

**1.10.3.2** Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;

**1.10.3.3** Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

**1.10.3.4** Any request or demand by one party that another party believes is not included within the terms of this Contract.

#### **1.10.4 Problem Reporting Omissions**

The Agency's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Agency may have. The Agency's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance or damages under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

#### **1.10.5 Change Order Procedure**

The Agency may at any time request a modification to the Scope of Work using a change order. The following procedures for a change order shall be followed:

**1.10.5.1** **Written Request:** The Agency shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.

**1.10.5.2** **The Contractor's Response:** The Contractor shall submit to the Agency a firm cost proposal for the requested change order within five (5) business days of receiving the change order request.

**1.10.5.3** **Acceptance of the Contractor Estimate:** If the Agency accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified



deliverables shall be governed by the terms and conditions of this Contract.

- 1.10.5.4 Adjustment to Compensation:** The parties acknowledge that a change order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

## **1.11 Legislative Changes**

The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold the Agency liable in any manner for the resulting changes. The Agency shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Agency's right to terminate the Contract pursuant to the termination provisions.

## **1.12 Intellectual Property**

### **1.12.1 Ownership and Assignment of Other Deliverables**

Contractor agrees that the State and Agency shall become the sole and exclusive owners of all Deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by Agency, upon completion or termination of this Contract, Contractor will immediately turn over to Agency all Deliverables not previously delivered to Agency, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Agency.

### **1.12.2 Waiver**

To the extent any of Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

### **1.12.3 Further Assurances**

At the Agency's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect or protect the



State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in this Contract.

## **1.13 Warranties**

### **1.13.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law**

Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by the Contractor. The provisions of this section apply during the term of this Contract and any extensions or renewals thereof.

### **1.13.2 Contractor represents and warrants that: (1) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party; (2) Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and (3) the Agency shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.**

### **1.13.3 Contractor represents and warrants that: (1) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (2) the Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the Agency's request and at the Contractor's sole expense: (1) procure for the Agency the right or license to continue to use the Deliverable at issue; (2) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (3) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (4) accept the return of the Deliverable at issue and refund to the Agency all fees, charges and any other amounts paid by the Agency with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including**





for any breach of the representations and warranties made by Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

- 1.13.4 Contractor represents and warrants that the Deliverables (in whole and in part) shall: (1) be free from material Deficiencies; and (2) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Special Terms. During the Warranty Period Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five business days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the Agency's satisfaction, Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.**
- 1.13.5 Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Agency any fees or compensation paid to Contractor for the unsatisfactory services.**
- 1.13.6 Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board, the Iowa Department of Administrative Services, and Iowa Office of the Chief Information Officer.**
- 1.13.7 Obligations Owed to Third Parties**
- The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Agency will not have any obligations with respect thereto.**



## 1.14 Acceptance Testing

Except as otherwise specified in the Scope of Work, all Deliverables shall be subject to the Agency's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be performed by Contractor with respect to any Deliverable, Contractor shall deliver a written notice to the Agency certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Agency to conduct Acceptance Tests; provided, however, that Contractor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Agency. At the Agency's request, Contractor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency. Within a reasonable period of time after the Agency has completed its Acceptance Testing, the Agency shall provide Contractor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Agency determines that a Deliverable satisfies its Acceptance Tests, the Agency shall provide Contractor with notice of Acceptance with respect to such Deliverable. If the Agency determines that a Deliverable fails to satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the Agency provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall correct and repair such Deliverable and submit it to the Agency within ~~ten (10) days~~ reasonably and mutually agreed time of Contractor's receipt of notice of Non-acceptance so that the Agency may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Agency determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Contractor has attempted to correct or repair pursuant to this section, that such Deliverable fails to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to:

- 1.14.1 Require Contractor to correct and repair such Deliverable within such period of time as the Agency may specify in a written notice to Contractor;
- 1.14.2 Refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable);
- 1.14.3 Accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Agency's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Agency to correct such Deficiencies; or
- 1.14.4 Terminate this Contract and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 1.6.1 of this Contract, the Agency may terminate this Contract pursuant to this section without providing Contractor with any notice or opportunity to cure provided for in Section 1.6.1. The Agency's right to exercise the foregoing rights and remedies, including termination of this Contract, shall remain in effect until Acceptance Tests are successfully completed to the Agency's satisfaction and the Agency has provided Contractor with written notice of Final Acceptance. If the Agency determines that all Deliverables satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Final Acceptance with respect to such Deliverables. Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Agency's rights to enforce the terms of this Contract or require performance in the event Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable(s).



## **1.15 Contract Administration**

### **1.15.1 Independent Contractor**

The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State or any agency, division or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Agency or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Agency will not withhold taxes on behalf of the Contractor (unless required by law).

### **1.15.2 Incorporation of Documents**

To the extent this Contract arises out of an RFP, the parties acknowledge that the Contract consists of these contract terms and conditions as well as the RFP and the Bid Proposal. The RFP and the Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by the Contractor to the provisions of the RFP shall be incorporated by reference into the Contract unless the Agency has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict between the Contract, the RFP and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) the Bid Proposal.

### **1.15.3 Intent of References to Bid Documents**

The references to the parties' obligations, which are contained in this Contract, are intended to supplement or clarify the obligations as stated in the RFP and the Bid Proposal. The failure of the parties to make reference to the terms of the RFP or the Bid Proposal in this Contract shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFP and the Contractor's Bid Proposal. The contractual obligations of the Agency cannot be implied from the Bid Proposal.

### **1.15.4 Compliance with the Law; Nondiscrimination in Employment.**

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers. Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section 1.15.11, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.



**Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.**

**If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.**

#### **1.15.5 Procurement**

**Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.**

#### **1.15.6 Non-Exclusive Rights**

**This Contract is not exclusive. The Agency reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the term of this Contract.**

#### **1.15.7 Non-Supplanting Requirement**

**To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.**

#### **1.15.8 Compliance with Iowa Code chapter 8F**

**If the Contract is subject to the provisions of Iowa Code chapter 8F, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Agency.**

#### **1.15.9 Amendments**

**This Contract may be amended in writing from time to time by mutual consent of the parties. Amendments to the General Terms for Services Contracts may appear in the Special Terms.**

#### **1.15.10 Third Party Beneficiaries**

**There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.**

#### **1.15.11 Use of Third Parties**

**The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Agency in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the**





subcontract(s) become effective. The Agency reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

**1.15.12 Choice of Law and Forum**

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.

**1.15.13 Assignment and Delegation**

Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

**1.15.14 Integration**

This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

**1.15.15 Headings or Captions**

The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

**1.15.16 Not a Joint Venture**

Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

**1.15.17 Joint and Several Liability**

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be

**jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.**

**1.15.18 Supersedes Former Contracts or Agreements**

**This Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Deliverables to be provided in connection with this Contract.**

**1.15.19 Waiver**

**Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.**

**1.15.20 Notice**

**Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Contract Declarations & Execution Page(s) at the address specified on the forms. Each such notice shall be deemed to have been provided:**

**1.15.20.1 At the time it is actually received; or,**

**1.15.20.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,**

**1.15.20.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.**

**1.15.21 Cumulative Rights**

**The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled.**

**1.15.22 Severability**

**If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.**

**1.15.23 Time is of the Essence**

**Time is of the essence with respect to the Contractor's performance of the terms of this Contract. Contractor shall ensure that all personnel providing Deliverables to the Agency are responsive to the Agency's requirements and requests in all respects.**

**1.15.24 Authorization**

**Contractor represents and warrants that:**

- 1.15.24.1** It has the right, power and authority to enter into and perform its obligations under this Contract.
- 1.15.24.2** It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

**1.15.25** Successors in Interest

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

**1.15.26** Records Retention and Access

The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures.

- 1.15.26.1** Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.
- 1.15.26.2** The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- 1.15.26.3** The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well



as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Agency.

- 1.15.26.4** The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.
- 1.15.26.5** The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

**1.15.27 Audits or Examination of Records**

- 1.15.27.1** Contractors that expend \$750,000 or more in a fiscal year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Single audits must be completed and the data collection form and reporting package must be submitted electronically to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after Contractor's receipt of the auditor's report(s), or nine months after the end of the audit period. The Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Contractor shall also submit one (1) copy of the final audit report to the Agency within thirty (30) days after Contractor's receipt thereof, if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.
- 1.15.27.2** If a Contractor is independently audited but is not required to submit the audit report per the criteria in subsection 1.15.27.1 above, the Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Within fifteen (15) days following Agency's request, the Contractor shall also submit one (1) copy of the final audit report to the Agency.
- 1.15.27.3** The Agency may require, at any time and at its sole discretion, that recipients of non-federal and/or federal funds have an audit performed. The Contractor shall submit one (1) copy of the audit report to the Agency within thirty (30) days of its issuance, unless specific exemption is granted in writing by the Agency. The Contractor shall submit with the audit report a copy of the separate letter to management addressing non-material findings, if provided by the auditor. The Contractor may be required to comply with other prescribed compliance and review procedures.





**1.15.27.4** The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Agency.

**1.15.28** **Qualifications of Staff**

The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Iowa Administrative Code.

**1.15.29** **Solicitation**

The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

**1.15.30** **Obligations Beyond Contract Term**

This Contract shall remain in full force and effect to the end of the specified term or until terminated pursuant to this Contract. All obligations of the Agency and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the termination or expiration of this Contract.

**1.15.31** **Counterparts**

The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

**1.15.32** **Delays or Impossibility of Performance**

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force



majeure” shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

**1.15.33 Suspensions and Debarment**

The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal Agency or State Agency. The Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contracts with the State of Iowa.

**1.15.34 Conflict of Interest**

Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Agency that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Contract. If a conflict of interest is proven to the Agency, the Agency may terminate this Contract, and the Contractor shall be liable for any excess costs to the Agency as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Agency.

**1.15.35 Certification Regarding Sales and Use Tax**

By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(47) & (48). The Contractor also acknowledges that the Agency may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

**1.15.36 Right to Address the Board of Directors or Other Managing Entity**

The Agency reserves the right to address the Contractor’s board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Agency determines appropriateness.

**1.15.37 Repayment Obligation**

In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Agency for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

**1.15.38 Further Assurances and Corrective Instruments**

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments here to and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

**1.15.39 Reporting Requirements**

If this Contract permits other State agencies and political subdivisions to make purchases off of the Contract, the Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a report to the Agency on a quarterly basis. The report shall identify all of the State agencies and political subdivisions making purchases off of this Contract and the quantities purchased pursuant to the Contract during the reporting period.

**1.15.40 Immunity from Liability**

Every person who is a party to the Contract is hereby notified and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

**1.15.41 Public Records**

The laws of the State require procurement records to be made public unless otherwise provided by law.

**1.15.42 Use of Name or Intellectual Property**

Contractor agrees it will not use the Agency and/or State's name or any of their intellectual property, including but not limited to, any State, state agency, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Agency and/or the State.

**1.15.43 Taxes**

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables. State of Iowa Tax Exempt Letter

**1.15.44 No Minimums Guaranteed**

The contract does not guarantee any minimum level of purchases or any minimum amount of compensation.



## State of Iowa Security Terms (“Security Terms”)

These Security Terms are entered into by and between [name of Vendor], a [entity type (e.g., limited liability company, limited liability partnership, or corporation)] registered in the State of [State of registration (e.g., Delaware)], with its principal place of business at [address of Vendor’s principal place of business] (“Vendor”) and the State of Iowa, acting by and through the [name of state agency] (“State of Iowa” or “State”). These Security Terms shall apply in addition to any other terms and conditions agreed to by the Parties, as amended, (“Underlying Agreement(s)”), and to the extent of any conflict or inconsistency between the specific provisions of these Security Terms and the terms of any other agreement between the Parties, these terms shall prevail. The parties may be referred to herein individually as a “Party” or collectively as the “Parties”; provided, however, that where the context clearly requires, the term “Party” or “Parties” may refer to or include the Governmental Entity making the individual purchase(s) pursuant to the applicable Underlying Agreement(s). Notwithstanding anything in these Security Terms or any Underlying Agreement(s) to the contrary, individual purchases made by Governmental Entities other than the Governmental Entity, including but not limited to OCIO, entering into this Agreement on behalf of the State of Iowa more broadly shall be deemed, upon making such purchase, to incorporate the terms and conditions of these Security Terms and shall constitute a separate, distinct and independent agreement between the applicable Governmental Entity and Vendor, and such Governmental Entity shall be solely responsible for any payments due and duties and obligations owed under these Security Terms and any Underlying Agreement(s).

### **1. Definitions. Capitalized terms not defined herein are as defined in the Underlying Agreement(s). The following capitalized terms shall have the following meanings:**

- 1.1. “Authorized Contractors” means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by any Governmental Entity to use, maintain, support, modify, enhance, host, or otherwise assist a Governmental Entity with any Services or Deliverables provided pursuant to an Underlying Agreement(s).**
- 1.2. “Confidential Information” means, subject to any applicable federal, State, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party (“Disclosing Party”) to the other Party (“Receiving Party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.**
- 1.3. “Customer Data” means all information, data, materials, or documents (including Confidential Information of or belonging to any applicable Governmental Entity) originating with, disclosed**



by, provided by, made accessible by, or otherwise obtained by or from a Governmental Entity making purchases pursuant to an Underlying Agreement(s), including Authorized Contractors of the foregoing, or otherwise related to an Underlying Agreement(s) in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor, Vendor Contractors, or Vendor Personnel in connection with any Services or Deliverables provided pursuant to an Underlying Agreement(s).

- 1.4. "Customer Property" means any property of or belonging to a Governmental Entity making purchases pursuant to an Underlying Agreement(s), including Customer Data, software, hardware, programs or other property possessed, owned, or otherwise controlled or maintained by a Governmental Entity.
- 1.5. "Deliverables" means all of the goods, Services, work, work product, items, materials, and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with any Underlying Agreement(s).
- 1.6. "Governmental Entity" shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision thereto. The term Governmental Entity includes without limitation Participating Agencies, agencies, independent agencies, the Judicial Branch, the Legislative Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government.
- 1.7. "I.T. Governance Document(s)" or "Governance Document(s)" means any Information Technology policies, standards, processes, guidelines, or procedures developed by OCIO pursuant to Iowa Code section 8B, available at: <https://ocio.iowa.gov/> (navigate to policies, standards, rules, respectively) **as of date of execution of this Agreement or as later mutually agreed**, and which are generally applicable to Participating Agencies, absent a waiver granted pursuant to Iowa Code section 8B.21(5) or any corresponding implementing rules.
- 1.8. "Office of the Chief Information Officer" or "OCIO" means the Office of the Chief Information Officer of the State of Iowa created by Iowa Code chapter 8B.
- 1.9. "Participating Agency" shall have the same meaning ascribed it under Iowa Code section 8B, including any subsequent amendments or successor provisions thereto.
- 1.10. "Purchasing Instrument" means documentation issued by a Governmental Entity to Vendor for the purchase of Deliverables under an Underlying Agreement(s), including a "Purchase Order" or "Statement of Work" executed thereunder, regardless of form, and which identifies the Deliverables to be purchased and any other requirements deemed necessary by the applicable Governmental Entity, such as compensation and delivery dates.
- 1.11. "Security Breach" means the unauthorized acquisition of or access to Customer Data by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. "Security Breach" shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.
- 1.12. "Services" include, without limitation, all services performed or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with any Underlying Agreement(s), including but not limited to the System or any corresponding hosting, implementation, migration, or configuration services related thereto.

- 1.13. "System" means any system provided or otherwise made available by or through Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with any Underlying Agreement(s), including any software, programs, or applications associated therewith or included or incorporated therein, regardless of the method of delivery, including but not limited to any Internet-enabled, Web-based or other similar delivery method.
- 1.14. "Third Party" means a person or entity (including, any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to any Underlying Agreement(s).
- 1.15. "Vendor Contractor(s)" means any of Vendors authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Deliverables under any Underlying Agreement(s).
- 1.16. "Vendor Personnel" means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Deliverables under any Underlying Agreement(s).

## 2. Security/Privacy, Business Continuity, and Disaster Recovery.

- 2.1. Data Ownership. All Customer Data shall be and remain the sole and exclusive property of the applicable Governmental Entity.
- 2.2. Vendor's access to and use of Customer Data. Vendor, Vendor Contractors, and Vendor Personnel shall not use any Customer Data for any purpose other than fulfilling Vendor's express obligations and duties under the Underlying Agreement(s) in accordance with the terms and conditions set forth therein, these Security Terms, and any applicable laws, rules, and regulations.
- 2.3. Data Protection. Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:
- 2.3.1. Implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, theft, or modification of Customer Property. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53 Revision 4 and ISO27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard their own data/information of like importance. In addition, such security measures shall comply with, and shall enable the applicable Governmental Entity to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, policies, or procedures ordinances, codes, regulations, and orders or other security, privacy, or safeguarding requirements, including applicable I.T. Governance Document(s) or any applicable Governmental Entity's then-current security policies, standards, or procedures that have been supplied to **and agreed to by** Vendor or Vendor Contractors by the applicable Governmental Entity.
- 1.3.2. All Customer Data shall be encrypted at rest and in transit with controlled access. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor, Vendor Contractors, and Vendor Personnel are responsible for encryption of Customer Data in their possession. Additionally, Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, **Level 1** Security Requirements for Cryptographic Modules for all Customer Data, unless the applicable Governmental Entity approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.



- 1.3.3. Storage, processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America. Vendor shall not allow Vendor Personnel to access, store, process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.**
- ~~1.3.4. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support. Vendor may not provide technical user support on a 24/7 basis using a Follow the Sun model.~~**
- 2.4. Hosting Terms. In addition to other terms herein that would be applicable to hosting, infrastructure, other “as a service” delivery models, or other similar Services, the following shall apply:**
- 2.4.1. Compliance/Audits.**
- 2.4.1.1. Compliance. Annually throughout the term, Vendor shall obtain and provide OCIO, upon request, at no additional cost:**
- 2.4.1.1.1. ~~An independent, Third-Party certificate of audit certifying that the Services/System complies with NIST 800-53, Revision 4 controls;~~**
- 2.4.1.1.2. An ISO/IEC 27001:20052013 certification;**
- 2.4.1.1.3. Test or summary assessment results of an independent, Third-Party assessment of application scans using the Open Web Application Security Project (OWASP) Top Ten List;**
- 2.4.1.1.4. Summary Test results of a penetration test conducted by an independent, Third-Party;**
- 2.4.1.1.5. A copy of Vendor’s annual SOC 2 type 2 report (for ~~all~~ Security and Confidentiality Trust Services Principles); and 2.4.1.1.6. A Vendor produced remediation plan resulting from items 2.4.1.1.1 through 2.4.1.1.5, inclusive.**
- 2.4.1.2. Ongoing Security Testing. Vendor will periodically test its systems for potential areas where security could be breached. During the term, to the extent Vendor engages a Third Party auditor to perform an SSAE ~~16~~ 18 of Vendor’s operations, information security program, and/or disaster recovery/business continuity plan, Vendor shall promptly furnish a copy of the test report or audit report to OCIO or its Authorized Contractors. In addition, Vendor shall disclose its non-proprietary security processes and technical limitations to OCIO or its Authorized Contractors to enable OCIO to identify compensating controls necessary to adequately safeguard and protect Customer Data, or to otherwise assist OCIO or any other Governmental Entity in complying with any laws, rules, regulations, orders, or corresponding audits. For example, Vendor shall disclose its security processes with respect to virus checking and port sniffing to OCIO. All such disclosures to OCIO will be treated as confidential information and not release to public review at any time.**

- 2.4.1.3. Security Audit by OCIO. During the term, OCIO or its Authorized Contractor(s) under appropriate nondisclosure agreement may perform security audits/scans of Vendor's environment at mutually agreeable dates, times and locations and of agreed scope, including unannounced penetration and security tests. Any Governmental Entity's regulators (and any federal agencies providing grant funds used to pay for such Deliverables, in whole or in part) shall have the same right upon request. Vendor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.
- 2.4.1.4. Access to Security Logs and Reports. Vendor shall provide appropriate extracts of security logs and reports to OCIO or its Authorized Contractors in a mutually agreeable format upon request. Such reports shall include at least latency statistics, user access summaries, user access IP address summaries, user access history and security logs for all State files related to any Underlying Agreement(s).
- 2.4.2. Backup and Recovery. Vendor is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within with a restore point objective (RPO) of no greater than two (2) hours at any point in time. Additionally, Vendor shall store a backup of Customer Data in an off-site "hardened" facility no less than daily, maintaining the security of Customer Data, and consistent with the security requirements set forth in this Section. To the extent applicable, any backups of Customer Data shall not be considered in calculating any fees levied pursuant to any Underlying Agreement(s).
- 2.4.3. Import and Export of Customer Data. To the extent Customer Data is stored, retained, or otherwise maintained in electronic format in connection with any hosting, infrastructure, or other similar Services, the applicable Governmental Entity or its Authorized Contractors shall have the ability to import or export data or information, including Customer Data, in whole or in part to or from such Services, at no charge, and in such formats as may be acceptable to the Governmental Entity mutually agreeable, without interference from Vendor, Vendor Contractors, or Vendor Personnel. In the event a Governmental Entity is unable to successfully import or export Customer Data in whole or in part, Vendor shall assist the Governmental Entity in doing so at no charge. As it relates to the export of such data and information, Vendor shall provide to or ensure the applicable Governmental Entity has obtained an export of any requested Customer Data within a timeframe mutually agreed between the Parties in the format specified by the Governmental Entity as mutually agreed.
- 2.4.4. Retention/Return/Destruction of Customer Data. Upon termination or expiration of any Underlying Agreement(s), Vendor may be required to promptly return or destroy, at the applicable Governmental Entity's sole option, all Customer Data, and provide a notarized written statement to the applicable Governmental Entity certifying that all Customer Data under or in Vendor's, Vendor Contractor's, or Vendor Personnel's control or possession has been delivered to the applicable Governmental Entity or destroyed, as requested by the applicable Governmental Entity unless required for legal compliance. To the extent Vendor is required to destroy Customer Data, such Customer Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Vendor agrees that in connection with any termination or expiration of any Underlying Agreement(s), Vendor shall not take any action to intentionally erase any Customer Data without first providing prior





notice to and consent from the applicable Governmental Entity in writing. On termination or expiration of any Underlying Agreement(s), the applicable Governmental Entity shall, except to the extent otherwise required by applicable laws, rules, regulations, policies, or procedures, including but not limited to record-retention requirements, or as otherwise required for use of any licenses, Services, or Deliverables previously supplied by Vendor, return or destroy, at Vendor's option, all of Vendor's Confidential Information.

**2.5. Personnel Safeguards.**

**2.5.1. Background Checks.**

**2.5.1.1. Floor.** Vendor shall conduct nationwide criminal background checks on Vendor Personnel and shall not utilize any such personnel in the performance of any Underlying Agreement(s) who have been convicted **in the seven (7) years preceding the background check** of any crime of dishonesty, including fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to one (1) year is an authorized penalty.

**2.5.1.2. Additional Screening.** Governmental Entities reserve the right to subject Vendor Personnel to additional background checks at any time prior to or during any engagement. Such background checks may include a work history, financial review, request for criminal history data, or local or state criminal history check, national criminal history check through the Federal Bureau of Investigation ("FBI"), or other background check requirement imposed by law, rule, regulation, order, or policy. Vendor Personnel may be required to authorize the release of the results of criminal history checks, including those through the FBI, to one or more Governmental Entities, including OCIO. Such background checks may be conducted by the applicable Governmental Entity or its Authorized Contractor. A Governmental Entity may also require Vendor to conduct a work history or financial review of Vendor Personnel. Vendor shall provide Governmental Entities with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.

**2.5.1.3.** Vendor shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor or a Governmental Entity or its Authorized Contractor.

**2.5.2. Right to Remove Individuals.** Should a Governmental Entity be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel, the Governmental Entity may request the replacement of such Vendor Personnel ("Replacement Request"). The Replacement Request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. If the applicable Governmental Entity, in its sole discretion, determines Vendor Personnel pose a potential security risk and notifies Vendor of such security risk in its Replacement Request, Vendor shall immediately remove such individual; any replacement furnished by



- Vendor in connection with such a request may not perform or provide Services or Deliverables to the applicable Governmental Entity unless and until the applicable Governmental Entity gives its consent to Vendor's use of such replacement. Vendor shall notify OCIO immediately upon receiving a Replacement Request from another Governmental Entity and promptly provide a copy of such Replacement Request to OCIO.
- 2.5.3. Security Awareness Training.** Vendor shall promote and maintain an awareness of the importance of securing Customer Property, including Customer Data, among Vendor Personnel.
- 2.5.4. Separation of Job Duties.** Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Contractors and Vendor Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Property to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Services and Deliverables pursuant to any Underlying Agreement(s).
- 2.5.5. Non-disclosure/Confidentiality Agreements.** Vendor Personnel may be required to sign a Governmental Entity's standard confidentiality or non-disclosure agreement(s), or other confidentiality or non-disclosure agreement(s) as may be required by applicable law, rule, regulation, or policy.
- 2.6. Security Breaches.**
- 2.6.1. Reporting.** Vendor or Vendor Contractors will report to the applicable Governmental Entity and OCIO within ~~two (2)~~ **forty-eight (48)** hours of Vendor's or Vendor Contractor's discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to the applicable Governmental Entity and OCIO within forty-eight (48) hours of discovery or notification of the actual or suspected Security Breach. Such written confirmation shall include an explanation of the nature of and circumstances surrounding such actual or suspected Security Breach.
- 2.6.2. Investigations in Response to Actual or Suspected Breach.** Vendor and Vendor Contractors agree, at their sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the applicable Governmental Entity and OCIO in resolving and mitigating any damage from such actual or suspected Security Breach at Vendor's sole cost. At no additional cost to the applicable Governmental Entity or the State of Iowa, Vendor and Vendor Contractor will fully cooperate with the applicable Governmental Entity, OCIO, and the Authorized Contractors of either of the foregoing in investigating such actual or suspected Security Breach, including reviewing and assisting in reviewing system, application, and access logs, conducting and assisting in conducting forensic audits of relevant systems, imaging and assisting in imaging relevant media, and making personnel available for interview. On notice of any actual or suspected Security Breach, Vendor and Vendor Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. Vendor and Vendor Contractor will deliver to the



applicable Governmental Entity and OCIO a root cause assessment and future incident mitigation plan, and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. Vendor agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless the applicable Governmental Entity specifically requests Vendor do so in writing.

- 2.6.3. Additional Remedies in the Event of Actual Breach.** Upon the applicable Governmental Entity's determination that a Security Breach involving or relating to Customer Data has occurred, Vendor and Vendor Contractors shall fully cooperate with the applicable Governmental Entity and OCIO in fully rectifying/responding to such Security Breach, including notifying all of the Governmental Entity's affected users. The applicable Governmental Entity shall determine, in its sole discretion, the content and means of delivery of any such notifications. Notwithstanding any provision in these Security terms or any Underlying Agreement(s), Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (including the reasonable value of time of the Iowa Attorney General's Office or the costs, expenses and attorney fees of other counsel retained by the State or any other Governmental Entity) related to, arising out of, or incurred by or on behalf of any Governmental Entity as a result of, any Security Breach caused directly or indirectly, in whole or in part, by Vendor Personnel, including the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); opening and closing accounts, printing new checks, embossing new cards; forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all other costs associated with corrective or other actions that are taken to mitigate or address the Security Breach. Vendor will reimburse or pay to the applicable Governmental Entity all such expenses, fees, damages, and all other amounts within fifteen (15) business days of the date of any written demand or request delivered to Vendor.

**2.7. Business Continuity/Disaster Recovery.**

- 2.7.1. Creation, Maintenance and Testing.** Vendor ~~and Vendor Contractors~~ shall maintain a Business Continuity and Disaster Recovery Plan for all Services provided hereunder ("Plan"), and implement such plan in the event of any unplanned interruption of Services. Vendor ~~or Vendor Contractors~~ shall provide Governmental Entities upon request, with a copy summary of Vendor's ~~or Vendor Contractor's~~ current Plan, revision history, and any reports or summaries relating to past testing of the Plan. Vendor ~~and Vendor Contractors~~ shall actively test, review, and update the Plan on at least an annual basis ~~using American Institute of Certified Public Accountants standards and other industry best practices as guidance~~. Vendor ~~and Vendor Contractors~~ shall promptly upon request provide the applicable Governmental Entities with copies summaries of all reports ~~and/or summaries~~ resulting



from **any** testing of the Plan and with **copies summaries** of any resulting updates to the Plan, **as requested**. Throughout the term of any Underlying Agreement(s), Vendor **and Vendor Contractors** shall maintain disaster avoidance procedures designed to safeguard Customer Data and the accessibility and availability of the Services or Deliverables.

- 2.7.2. **Activation of Plan.** Vendor **and Vendor Contractors** shall immediately notify any adversely affected Governmental Entities and OCIO of any disaster or other event in which the Plan is activated. If Vendor **or Vendor Contractors** fail to reinstate Services or Deliverables within the time periods set forth in the Plan, in addition to any other remedies available to applicable Governmental Entities hereunder, the applicable Governmental Entity may immediately terminate the Underlying Agreement or adversely affected Purchasing Instrument(s) without any penalty or liability. Without limiting Vendor's obligations under this Agreement, whenever a disaster causes Vendor **or Vendor Contractors** to allocate limited resources between or among Vendor's **or Vendor Contractor's** customers, Governmental Entities procuring Services or Deliverables hereunder shall receive at least the same treatment as comparable Vendor **or Vendor Contractor's** customers with respect to such limited resources. The provisions of any force majeure clause in any Underlying Agreement(s) shall not limit Vendor's obligations under this Section.

- 2.8. **Ancillary Agreements and Non-Disclosure Agreements.** Vendor or Vendor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to an applicable Governmental Entity making purchases hereunder, such as a Business Associate Agreement ("BAA") or Criminal Justice Information System ("CJIS") Security Addendum, or any other non-disclosure or confidentiality agreements in connection with this Agreement or any related agreement deemed necessary by the applicable Governmental Entity ("Ancillary Agreement(s)").

- 2.9. **Transition Assistance.** Vendor agrees that in connection with any termination or expiration of any Underlying Agreement(s), Vendor will continue to perform such Services or provide Deliverables under any Underlying Agreement as the applicable Governmental Entity may request for a transition period up to 365 days from the effective date of termination or expiration of any Underlying Agreement. As part of any such request, the applicable Governmental Entity will inform Vendor of the number of days during which the Vendor will continue to provide such Services or Deliverables, and perform transition and other related services under this Section (the "Transition Period"). During the Transition Period, Vendor will take all actions as may be necessary or requested by the applicable Governmental Entity to accomplish a complete and timely transition, including but not limited to a full migration of all Customer Data from Vendor to the applicable Governmental Entity or its Authorized Contractor(s) hired or utilized by the State to provide any replacement or similar services related to the services (the "New Contractor"). Vendor will use its best efforts to cooperate with the applicable Governmental Entity and any New Contractor, and to fully comply with all requests of the same to effect a smooth and timely transition and to ensure there is no interruption of any services, information, or transactions provided or conducted through the Services or Deliverables. Vendor agrees that it will perform all transition services in good faith and in a professional and businesslike manner, and shall comply with all requests of the applicable Governmental Entity





and any New Contractor to assist in the effort to accomplish a successful, seamless, and unhindered transition of the Services or Deliverables, migration all Customer Data or information, and transfer of Vendor's responsibilities under any Underlying Agreement(s). Vendor will perform all transition services on an expedited basis, as determined by the applicable Governmental Entity. During the Transition Period, the applicable Governmental Entity agrees to pay to Vendor any fees to which Vendor would be entitled under any Underlying Agreement for Services or Deliverables performed during such period; provided such Underlying Agreement was not terminated due to Vendor's breach of such Underlying Agreement or for reasons related to the non-appropriation of funds as defined by such Underlying Agreement, and Vendor continues to be in full compliance with all terms, conditions, provisions and requirements of any Underlying Agreement and these Security Terms. In the event a Governmental Entity's request for transition assistance does not require Vendor to continue providing all of the Services or Deliverables under any Underlying Agreement, the Parties shall negotiate in good faith an equitable adjustment in the fees which are otherwise payable to Vendor for such Services or Deliverables as the State requests the Vendor to provide.

- 2.10. Vendor shall include ~~the~~ terms and conditions that are substantially similar to the terms and conditions in this Section in all of its contracts, subcontracts, or other agreements with Vendor Contractors.