

PARTICIPATING ADDENDUM
For the Sourcewell Contract 121219-SHW
Between The Sherwin-Williams Company and State of Iowa

1.1 Scope

This participating addendum covers the contract 121219-SHW with The Sherwin-Williams Company led by Sourcewell for Paint with Related Supplies, Equipment and Services for use by state agencies and other governmental entities located in the State of Iowa (together, the "Parties") authorized by State of Iowa statutes to utilize State contracts with the prior approval of the State of Iowa - Chief Procurement Officer. The Contract, as now or hereafter amended, is incorporated into this addendum ("Participating Addendum") as if set forth at length. Issues of interpretation and eligibility for participation are solely within the authority of the State of Iowa - Chief Procurement Officer.

1.2 Participation

Use of specific cooperative contracts by agencies, political subdivisions, and other entities (including cooperatives) authorized by State of Iowa statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Within the State of Iowa, all state agencies, state facilities, cities, counties or education entities or any entity funded in part with state tax dollars, are eligible purchasers and authorized to purchase Products and Services under the terms of this Participating Addendum in lieu of a separate competitive selection process. (Exception: State of Iowa executive branch agencies must purchase according to applicable system standards and seek approval from the State of Iowa - Office of the Chief Information Officer when required as directed by Iowa Administrative Code before purchasing from this contract.)

1.3 Order of Precedence

1. The State of Iowa Participating Addendum ("PA");
2. The Lead Agency's Master Agreement (includes negotiated Terms & Conditions)
3. The Lead Agency's Solicitation including all Addendums; and
4. Contract Vendor's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

1.4 Terms

The Agency is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

1.5 Modifications or Additions to the Contract

1.5.1 Reports

The Contractor shall submit electronic quarterly reports to the State of Iowa Contract Administrator showing all sales made quarterly against this Participating Addendum within the State of Iowa. Such reports will show the quantities and dollar volume of purchases by each Purchasing Entity. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

Quarter #1: July 1 through September 30, due annually by October 30

Quarter #2: October 1 through December 31, due annually by January 30

Quarter #3: January 1 through March 31, due annually by April 30.

Quarter #4: April 1 through June 30, due annually by July 30.

Provided the State provides Contractor with the appropriate information, the Report must contain the following fields:

- Purchasing Entity Name (e.g., City of Staples Highway Department);
- Purchasing Entity Physical Street Address;
- Purchasing Entity City;
- Purchasing Entity State;
- Purchasing Entity Zip Code;
- Purchasing Entity Contact Name;
- Purchasing Entity Contact Email Address;
- Purchasing Entity Contact Telephone Number;
- Purchasing Entity Assigned Entity/Member Number;
- Order Date
- Purchase Order Number
- Item Purchased Full Description;
- Item number or SKU number
- Item Purchased Price;
- Quantity
- Unit of Measure
- Extended Unit Price
- Invoice Number
- Invoice Date

1.5.2 Pricing

Contractor's stated prices on the Sourcwell website shall be discounted using the discounts and price lists approved and agreed to with the Contractor's Pricing List. The stated discounts are considered to be the minimum discount offered. The Contractor may offer, within written quotes, a higher discount than the approved minimum discount for volume purchases or for competitive reasons. Agencies shall be allowed to negotiate further discounting for large volume purchases.

1.5.3 Invoicing

For the duration of the contract, all product pricing shown on invoices submitted to the State shall:

- Not fall short of the discounts quoted on the Pricing List.
- Items covered under this contract are FOB Destination and shipping charges are not to be included on any invoice unless the Agency has ordered expedited shipment. For expedited shipment, Agency would submit their order including related shipping charges, which may not exceed the cost of delivery by the carrier.

1.5.4 Administrative Fee

Without affecting the approved Product or Service prices or discounts specified in the Contract and this Participating Addendum, the State of Iowa shall be entitled to receive a one percent (1.00%) administrative fee on all net sales made within the State of Iowa against this agreement. The administration fee due to the State of Iowa shall be paid quarterly by Contractor directly to the Participating State, made payable to the "Iowa Department of Administrative Services". Payments must be received no later than sixty (60) calendar days after the end of each calendar quarter. For purposes of this Contract, "Net Sales" means the gross sales of the applicable products by Sherwin-Williams to the State of Iowa, during the applicable period, minus all allowances, returns, credits, freight, unpaid invoices, bad debt, labor, sales taxes and/or similar taxes. Net Sales will be calculated based upon Sherwin-Williams' sales records.

Send to:

State of Iowa – DAS/Central Procurement
Attention: DAS – CPFSE COO
1305 E. Walnut St.
Des Moines, IA 50319

1.5.5 Payment Terms

Payment Terms shall be Net 60 days. Per Iowa Code § 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a Contractor. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

1.5.6 Terms and Conditions

The terms and conditions found in Attachment 1 shall govern this Participating Addendum.

1.5.7 Contract Effective Dates

This PA is effective upon final signature of all parties, and shall be coterminous with Master Agreement.

1.6 Orders

Any Order placed by an entity ordering under this Participating Addendum for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

1.7 Primary Contacts

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Craig Mackay
Address	6401-3 Virginia Manor Road, Beltsville, MD 20705
Telephone	240-350-7862
Fax	None
E-mail	craig.mackay@sherwin.com

State of Iowa

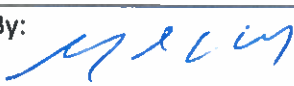
Name	Randy Worstell
Address	Hoover Building, 3 rd Floor, 1305 E Walnut Street, Des Moines, Iowa 50319
Telephone	515-725-2090
Fax	515-725-2064
E-mail	Randy.worstell@iowa.gov

The Parties will keep and maintain current at all times a primary point of contact for administration of this Participating Addendum.

1.8 Entire Agreement

This Participating Addendum and the Contract (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

The Sherwin-Williams Company	State of Iowa
By: 	By: 
Name: CRAIG MACKAY	Name: RANDY WORSTELL
Title: NATIONAL SALES MGR - TAG	Title: PURCHASING AGENT III
Date: JUNE 3, 2020	Date: 06/04/2020

ATTACHMENT 1
ADDITIONAL TERMS AND CONDITIONS

2.1 Definitions

The following words shall be defined as set forth below:

"Contract" means the collective documentation memorializing the terms of the agreement between the State 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 Goods Contracts, any Special Contract Attachments, any signed certifications, 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 the Contractor's Bid Proposal in response to the Competitive Bidding Document, these General Terms and Conditions for Goods Contracts, the final pricing documentation for goods, and the Special Terms. However, no objection or amendment by a Contractor to the Competitive Bidding Document requirements shall be incorporated by reference into this Contract unless the State has accepted the Contractor's objection or amendment in writing.

"Contractor" means the provider of the goods under the Contract.

"Product" refers to any other products, goods, materials or items that are ordered, developed, produced, delivered, installed, licensed, performed, provided, or otherwise made available, under or through this Contract or Order. The term "Product" includes all related, provided, or supplied Documentation, updates, source code, upgrades, and enhancements.

"Purchase Instrument" means the documentation issued by the State to the Contractor for a purchase of goods in accordance with the terms and conditions of the Contract. It may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the State. Any pre-printed contract terms and conditions included on Contractor's forms or invoices shall be null and void.

"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 any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms and Conditions for Goods Contracts and the Special Terms, the Special Terms shall prevail.

"State" means the State of Iowa, the state agency identified on the Contract Declarations & Execution Page(s), and all state agencies, boards, and commissions, and any political subdivisions making purchases off of this Contract as permitted by the Competitive Bidding Document.

2.2 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.

2.3 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 applicable terms and conditions. The State may exercise any applicable extension by giving the Contractor written notice of the extension decision at least thirty (30) days prior to the expiration of the initial term or renewal term.

2.4 Description of Goods

2.4.1 Specifications in Competitive Bidding Documents

The Contractor shall provide goods that comply with the specifications contained in the Competitive Bidding Document identified by bid number in the Contract Declarations & Execution Page(s).

2.4.2 Product Shipment and Delivery

All products shall be delivered free of charge within 20 miles of store. Destination shall be the location(s) specified in the Purchase Instrument. Contractor bears all risk of loss during shipment of goods. The Contractor shall properly package goods. The State will not accept noticeably damaged goods. The State reserves the right to inspect the goods at a reasonable time subsequent to delivery in the event the State is unable to perform an adequate inspection of the goods at the time of delivery. If the State discovers damaged or defective goods not readily apparent at the time of delivery, the State shall have the right to return goods at no cost to the State, regardless of when the damage or defect is discovered.

2.4.3 Non-Exclusive Rights

The Contract is not exclusive. The State reserve the right to select other contractors to provide goods similar or identical to goods described in the Contract during the term of the Contract.

2.4.4 No Minimums Guaranteed

The Contract does not guarantee any minimum level of purchases.

2.5 Compensation

2.5.1 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.

2.5.2 Billings

The Contractor shall submit, on a regular basis an invoice for goods supplied to the State under the Contract at the billing address specified in the Purchase Instrument. The invoice shall comply with all applicable rules concerning payment of such claims. The State shall verify the Contractor's performance of the services outlined in the invoice before making payment. The State shall pay all approved invoices in arrears and in accordance with applicable provisions of Iowa law.

2.5.3 Delay of Payment Due to Contractor's Failure

If the State determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the State shall provide notice to Contractor, Contractor shall not be entitled to any compensation under the Contracts until such service or product is performed or delivered. In this event, the State may withhold that portion of the Contractor's compensation which represents payment for goods that were not delivered.

2.5.4 Setoff Against Sums Owed by the Contractor

In the event that the Contractor owes the State any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff. Similarly, in the event that the State owes the Contractor any sum under the terms of the Contract, Contractor may exercise its right to set off by withholding a portion of the Administrative Fee.

2.6 Termination

2.6.1 Immediate Termination by the State

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

2.6.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods, 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;

- 2.6.1.2 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;
- 2.6.1.3 The Contractor fails to comply with confidentiality laws or provisions;
- 2.6.1.4 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.

2.6.2 Termination for Cause

The occurrence of any one or more of the following events shall constitute cause for the State or Contractor to declare the other Party in default of its obligations under its Contract.

- 2.6.2.1 The Contractor fails to deliver or has delivered nonconforming goods or fails to perform, to the State's satisfaction, any material requirement of its Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
- 2.6.2.2 The State determines that satisfactory performance of its Contract is substantially endangered or that a default is likely to occur;
- 2.6.2.3 The Contractor fails to make substantial and timely progress toward performance of the Base and/or Subsequent Contracts;
- 2.6.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under bankruptcy laws; the Contractor terminates or suspends its business; or the State reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 2.6.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- 2.6.2.6 The Contractor has engaged in conduct that has or may expose the State or the State to liability; or
- 2.6.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the State, or a third party.
- 2.6.2.8 The State does not pay Contractor for Products as required under the Contract.

2.6.3 Notice of Default

If there is a default event caused by the Contractor, the State shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the State's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the State may:

2.6.3.1 Immediately terminate its Contract without additional written notice; and/or,

2.6.3.2 Procure substitute goods from another source; and/or,

2.6.3.3 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

2.6.4 Termination Upon Notice

Following 30 days' written notice, the State may terminate its Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods provided under the Contract to the State up to and including the date of termination.

2.6.5 Termination Due to Lack of Funds or Change in Law

The State shall have the right to terminate its Contract without penalty by giving 30 days' written notice to the Contractor as a result of any of the following:

2.6.5.1 Adequate funds are not appropriated or granted to allow the State to operate as required and to fulfill its obligations under the Contract;

2.6.5.2 Funds are de-appropriated or not allocated or if funds needed by the State, at the State's sole discretion, are insufficient for any reason;

2.6.5.3 The State's authorization to operate is withdrawn or there is a material alteration in the programs administered by the State;

2.6.5.4 The State's duties are substantially modified.

2.6.6 Remedies of the Contractor in Event of Termination by the State

In the event of termination of the Contract for any reason by the State, the State shall pay only those amounts, if any, due and owing to the Contractor for goods actually rendered up to and including the date of termination of the Contract and for which the State is obligated to pay pursuant to its Contract or Purchase Instrument. Payment will be made only upon submission of invoices and federal or state law to the extent allowed by applicable federal or state law including proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Contract in the event of termination. The State shall not be liable for any of the following costs:

- 2.6.6.1** The payment of unemployment compensation to the Contractor's employees;
- 2.6.6.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- 2.6.6.3** Any costs incurred by the 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;
- 2.6.6.4** Any taxes that may be owed by the Contractor in connection with the performance of the Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

2.6.7 The Contractor's Termination Duties

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

- 2.6.7.1** Cease work under the 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 under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the State may require.
- 2.6.7.2** Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract.
- 2.6.7.3** Cooperate in good faith with the State, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Contractor.
- 2.6.7.4** Immediately return to the State any payments made by the State for goods that were not delivered or rendered by the Contractor.

2.6.8 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 State and cooperate with the State or the State in any lawful effort to protect the confidential information.

2.6.9 Survives Termination

The Contractor's confidentiality obligation under the Contract shall survive termination of the Contracts.

2.7 Indemnification

2.7.1 The Contractor agrees to indemnify and hold harmless the State of Iowa, the States, its officers, employees, volunteers and agents (collectively the indemnified parties) from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the indemnified parties, directly caused by:

2.7.1.1 Any material breach of the Contract resulting in loss or damage to the State;

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

2.7.1.3 Claims, demands, or lawsuits that, with respect to the goods or any parts thereof, resulting in product liability, strict product liability, or any variation thereof;

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

2.7.1.5 Any failure by the Contractor to comply with the Compliance with the Law provision of the Contract;

2.7.1.6 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 or United States;

2.7.1.7 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or

2.7.2 Survives Termination

The indemnification obligation of the Contractor shall survive termination of the Contract.

2.8 Insurance

2.8.1 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. The Contractor's insurance shall, among other things, be occurrence based 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 purchasing agency shall be named as additional insureds

or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

2.8.2 Types and Amounts of Insurance Required

Unless otherwise requested by the State 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.

2.8.3 Certificates of Coverage

All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the State. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the State upon execution of this Contract. The certificates shall be subject to approval by the State. 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 State. Approval of the insurance certificates by the State shall not relieve the Contractor of any obligation under this Contract.

2.8.4 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 but only to the extent of Contractor's negligence. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

2.9 Warranties

2.9.1 Warranty; Limitation of Liability

Contractor warrants that the Products shall be free of manufacturing defects, as determined by Contractor, and shall conform with the specifications, if any, provided by Contractor. Except as expressly provided in this Agreement and in any project-specific warranty issued by Contractor, CONTRACTOR DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. ALL CLAIMS FOR INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON THEORIES OF CONTRACT, TORT OR OTHERWISE, ARE WAIVED BY BOTH PARTIES. Contractor does not warrant the application of any Products notwithstanding periodic visits to any of the State's project(s) by any representative of Contractor and notwithstanding any representations made by any representative of Contractor to the contrary. Contractor's liability and the State's exclusive remedy for any cause of action arising from this Agreement or the sale and use of the Products, is expressly limited to, at the State's option, replacement of the Products with respect to which damages are claimed, or credit of the purchase price for the Products with respect to which damages are claimed

2.9.2 Compliance with Federal Safety Acts

Contractor warrants and guarantees to the State that the goods provided under the Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget 2 CFR part 200 and the Anti-Kickback Act of 1986.

2.9.3 Concepts, Materials, and Goods Produced

Contractor represents and warrants that all the concepts, materials, and goods produced, or provided to the State pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, and goods. The Contractor represents and warrants that the concepts, materials, and goods and the State's use of same and the exercise by the State of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods contemplated by the Contract.

2.9.4 Conformity with Contractual Requirements

The Contractor represents and warrants that the goods provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.

2.9.5 Authority to Enter into Contract

The Contractor represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.

2.9.6 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 the Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.

2.9.7 Industry Standards

The Contractor represents and expressly warrants that all aspects of the goods provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.

2.10 Product Recall

In the event that any of the goods are found by the Contractor, to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such goods be reworked or recalled, the Contractor will promptly communicate all relevant facts to the State and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the State from taking such action as may be required of it under any such law or regulation. The Contractor shall replace the defective products at its sole expense.

2.11 Contract Administration

2.11.1 Incorporation of Documents

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

2.11.2 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.

Contractor acknowledges that it complies with applicable laws relating to affirmative action plans, 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 1.13.8, 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.

2.11.3 Amendments

The Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by the parties.

2.11.4 Third-Party Beneficiaries

There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the State and the Contractor.

2.11.5 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 choice of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall solely be brought in the District Court for the State of Iowa in the county where venue is appropriate. Alternatively, if venue is proper in federal court, suit shall solely be brought in the United States District Court for the Northern or Southern District of Iowa, wherever jurisdiction is appropriate. Nothing contained in this provision shall be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity or Eleventh Amendment immunity, which may be available to the State.

2.11.6 Assignment and Delegation

The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the State. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

2.11.7 Use of Third Parties

The State acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor obligations under the Contract. All subcontracts shall be subject to prior approval by the State. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all goods delivered under the Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the State. The State shall have the right to request the removal of a subcontractor from the Contract for good cause.

2.11.8 Integration

The 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 the Contract.

2.11.9 Headings or Captions

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

2.11.10 Not a Joint Venture

Nothing in the 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 thereto. Each party shall be deemed to be an independent contractor contracting for goods and acting toward the mutual benefits expected to be derived herefrom. No party 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 the Contract.

2.11.11 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 the Contract, and for any default of activities and obligations.

2.11.12 Supersedes Former Contracts or Agreements

Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the State and the Contractor for the goods provided in connection with the Contract.

2.11.13 Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of the State 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.

2.11.14 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:

2.11.14.1 At the time it is actually received; or,

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

2.11.14.3 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.

2.11.15 Cumulative Rights

The various rights, powers, options, elections and remedies of any party provided in the 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 as long as any default remains in any way unremedied, unsatisfied or undischarged.

2.11.16 Severability

If any provision of the 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 the Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law.

2.11.17 Time is of the Essence

Time is of the essence with respect to the performance of the terms of the Contract. Contractor shall ensure that all personnel providing goods to the State are responsive to the State's requirements and requests in all respects, unless Contractor notifies the State of any delays

2.11.18 Authorization

Contractor represents and warrants that:

2.11.18.1 It has the right, power and authority to enter into and perform its obligations under the Contract.

2.11.18.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

2.11.19 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.

2.11.20 Record Retention and Access

The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of

the Contract for a period of at least three (3) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any 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 the 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. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

2.11.21 Solicitation

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

2.11.22 Immunity from Liability

Every person who is a party to the Contract is hereby notified and agrees that the State, and all of its 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.

2.11.23 Public Records

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

2.11.24 Clean Air and Water Certification

Contractor certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will immediately notify the State of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities

2.11.25 Debarred, Suspended, and Ineligible Status

Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Iowa or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the State if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

2.11.26 Use of Name or Intellectual Property

Contractor agrees it will not use the name or any intellectual property, including but not limited to, any State trademarks or logos in any manner, including commercial advertising

or as a business reference, without the expressed prior written consent of the specific State agency involved.

2.11.27 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](#)

2.11.28 Certification Regarding Sales and Use Tax

By executing the 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 the 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 State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the State or its representative filing for damages for breach of contract.

2.11.29 Contractor Assignments of Rights -Antitrust Claims

In consideration of the mutual promises contained herein, Contractor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa relating to the subject of the Contract.

2.11.30 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, pandemic 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 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.

2.11.31 Obligations Beyond Contract Term

The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.

2.11.32 Counterparts

The parties agree that the 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.

2.11.33 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 supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.
