



**STATE OF IOWA**  
**MASTER AGREEMENT**  
 Contract Declaration and Execution

EFFECTIVE BEGIN DATE: 05-01-2015  
 EXPIRATION DATE: 04-30-2025  
 PAGE: 1 of 12

**VENDOR:**

Motorola Solutions Inc

13108 Collections Center Dr  
 Chicago, IL 60693

**VENDOR CONTACT:**

Scott Schultz

PHONE: (515)-240-0122 EXT:

EMAIL: scottschultz@motorolasolutions.com

FOB FOB Dest, Freight Prepaid

**ISSUER:**

RYAN ROOVAART

PHONE: 515-725-6255

EMAIL: Ryan.Roovaart@iowa.gov

**Contract For:** Motorola Radios and Subscriber Equipment

The parties agree to comply with the terms and conditions on the following attachments which are by this reference made a part of the Agreement.

Attachment 1: Request for Proposal RFP1013005265

Attachment 2: General Terms and Conditions for service contracts are posted at:  
[http://das.gse.iowa.gov/terms\\_services.pdf](http://das.gse.iowa.gov/terms_services.pdf) as revised by Attachment 5: Special Terms and Conditions

Attachments 3-5 are on file with the Department of Administrative Services, General Services Enterprise.

Attachment 3: Contractor's Response to Competitive Bidding RFP1013005265 (except for any contractor objection or amendment to the Competitive Bidding Document requirements that the State has not explicitly agreed to in writing)

Attachment 4: Bidders' Cost (final pricing documentation) response to competitive bidding document RFP1013005265.

Attachment 5: Special Terms and Conditions

FOB Delivered

Amount of Insurance (See RFP section 6 as revised by Attachment 5: Special Terms and Conditions)

Payment Terms (60 days)

**RENEWAL OPTIONS**

**AUTHORIZED DEPARTMENT**

ALL  
 SUB Other Governmental Entities

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		STATE OF IOWA	
CONTRACTOR'S NAME (If other than an individual, state whether a corp., partnership, etc.)		AGENCY NAME	
BY (Authorized Signature)	Date Signed	BY (Authorized Signature)	Date Signed
Printed Name and Title of Person Signing		Printed Name and Title of Person Signing	
Address		Address	



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1	0.00000	EA	7257461	\$3,261.000000 \$0.000000
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**RADIOS, TWO-WAY, PORTABLE PACKAGE**

**Portable Radio - Configuration 1 APX 6000 Model 1.5**

The base radio package for the low-tier portable equipment is the APX 6000 Model 1.5 portable. The APX 6000 Model 1.5 is fully compliant with the RFPs low-tier portable specifications.

The APX 6000 Model 1.5 includes these features and functions:

- 1000 channels / talkgroups.
- Integrated GPS receiver.
- Front color display and top intelligent lighting status.
- Adaptive dual-microphone noise reduction.
- Backlit top display
- One line, eight characters, with one row for icons; monochrome LCD top-mounted display.
- Large Angled Volume On/Off knob and large Channel selector knob for easy gloved operation.
- Top-mounted orange emergency button.
- Three programmable side buttons for easy access features.
- Large Universal Push-to-talk button backlit for easy activation.
- Rugged GCAI accessory connector for improved audio accessories.
- Easy Access Emergency Button.
- Meets Military Specs 810 (C, D, E, and F).

Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.

2	0.00000	EA	7257461	\$3,411.000000 \$0.000000
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**RADIOS, TWO-WAY, PORTABLE PACKAGE**

**Portable Radio - Configuration 2 APX 6000 Model 2.5**

**Mid-Tier Portable Offering**

The base radio package for the mid-tier subscriber is the APX 6000 Model 2.5 portable. The APX 6000 Model 2.5, is fully compliant with State of Iowas mid-tier portable within the RFP. specifications.

The APX 6000 Model 2.5 includes the following features and functions:

- 1000 channels / talkgroups (optional 3000 channels)
- Integrated GPS receiver.
- Front color display and backlit top display.
- Adaptive dual-microphone noise reduction.
- IP 67 submersibility
- P25 Trunking and concurrent operation on analog SmartNet/SmartZone systems.
- Optional Delta-T submersibility (2 meter 2 hour submersion rating).
- Optional green or yellow colored housings or side band color options.
- 6-line, 14-character display, with two rows for icons, alphanumeric display.
- 3 x 2 keypad with for navigating through menus.



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Cellular style user interface and color display.

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3	0.00000	EA	7257461	\$3,611.000000 \$0.000000
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**RADIOS, TWO-WAY, PORTABLE PACKAGE**

**Portable Radio - Configuration 3 APX 6000 Model 3.5**

High-Tier Portable Offering

The radio package selected for the high-tier portable subscriber equipment is the APX 6000 Model 3.5 portable. The APX 6000 Model 3.5 is fully compliant with State of

Iowas high-tier portable specifications presented in the RFP.

The proposed APX 6000 Model 3.5 package includes the following features and functions:

1000 channels / talkgroups. (Optional 3000 channels).

Integrated GPS receiver.

Top and front panel display with full keypad.

IP67 submersibility (1 meter 30 minute submersion rating).

Adaptive dual-microphone noise cancellation.

P25 Trunking and concurrent operation on analog SmartNet/SmartZone systems.

Optional Delta-T submersibility (2 meter 2 hour submersion rating).

Optional green or yellow colored housings or side band color options.

3 x 6 keypad with up to 24 programmable soft keys.

Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.

4	0.00000	EA	7257461	\$38.000000 \$0.000000
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**RADIOS, TWO-WAY, PORTABLE PACKAGE**

**Programming of Motorola Portable Radio (optional)**

Optional-

5	0.00000	EA	7257460	\$3,792.000000 \$0.000000
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**RADIOS, MOBILE**

**Mobile Radio Low Tier APX 6500 with O2 control head**

Low Tier Mobile Radios

The radio package selected for the low-tier mobile subscriber equipment is the APX 6500 with O2 control head. The APX 6500 with O2 control head is fully compliant with State of Iowas low-tier mobile specifications.

The O2 control head is ergonomically enhanced

for gloved operation (to the right). It is available in black and impact Green and can be used in dash mount configuration or remote mount. The O2 control head offers the following user interface



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features:  
 Integrated 7.5W speaker.  
 Bluetooth hardware.  
 Multifunction knob.  
 Large color display with 5-line, 14-character, with one row for icons, customizable multi-color LCD display.  
 Can be ordered with a 3 x 6 keypad microphone accessory with three programmable soft keys.  
 Four programmable soft key buttons and, five scroll-through menus with up to 20 programmable soft keys.  
 Multiple control head configuration to fully control a single radio with up to two wired locations.  
 Recessed orange emergency button.  
 Meets Military Specs 810 (C, D, E, and F).

Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.

6	0.00000	EA	7257460	\$3,740.00000 \$0.00000
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**RADIOS, MOBILE**

**Mobile Radio Mid Tier APX 6500 with O5 control head**

The radio package selected for the mid-tier mobile subscriber equipment is the APX 6500 with O5 control head. The APX 6500 with O5 control head is fully compliant with State of Iowas mid-tier mobile specifications per the RFP.  
 The O5 control head, at the right, can be used in dash, remote, and motorcycle mount configurations. The O5 control head offers the following user interface features:  
 4-line, 14-character, with one row for icons, customizable tri-color LCD display.  
 Can be ordered with a 3 x 6 keypad microphone accessory with three programmable soft keys.  
 Five programmable soft key buttons and, five scroll-through menus with up to 24 programmable soft keys.  
 Multiple control head configuration to fully control a single radio with up to two different wired locations.  
 Recessed orange emergency button.  
 Meets Military Specs 810 (C, D, E, and F).

Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.



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7	0.00000	EA	7257460	\$3,840.000000 \$0.000000

**RADIOS, MOBILE**

**Mobile Radio High Tier APX 6500 w O7 control head**

High Tier Mobile Radios

The radio package selected for the high-tier mobile subscriber equipment is the APX 6500 with O7 control head. The APX 6500 with O7 control head is fully compliant with State of Iowas high-tier mobile specifications.

The O7 control head, can be used in dash and remote configurations.

The O7 control head offers the following user interface features:

DTMF keypad for light and siren control in a remote mount configuration.

Bluetooth hardware.

Multifunction knob.

Large color display with 5-line, 14-character, with one row for icons, customizable multi-color

LCD display.

Can be ordered with a 3 x 6 keypad microphone accessory with three programmable soft keys.

Four programmable soft key buttons and, five scroll-through menus with up to 20 programmable soft keys.

Multiple control head configuration to fully control a single radio with up to four different wired locations (APX 7500), and 2 wired locations (APX 6500).

Recessed orange emergency button.

Meets Military Specs 810 (C, D, E, and F).

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8	0.00000	EA	7257460	\$4,620.000000 \$0.000000
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**RADIOS, MOBILE**

**Mobile Radio - High**

**Tier Multi-Band**

The APX 7500 is our multiband mobile radio, proposed to meet the States RFP requirement for a multiband radio option. The APX 7500 can operate on Project 25 Phase 1 FDMA and Phase 2 TDMA trunking systems, SmartNet/SmartZone trunked systems, and analog and Project 25 conventional

systems. It is capable of Project 25-compliant AES encryption, the most advanced security/encryption

features available in the industry.

The APX 7500 mobile supports multiple configurations to best support the State of Iowas user

needs. The APX 7500 can operate in 7/800 & VHF MHz band operation or can be ordered to operate in 7/800 & UHF Band operation.



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9	0.00000	EA	7257460	\$288.000000 \$0.000000
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**RADIOS, MOBILE**  
 Mobile Radio Dash Mount Install removal programming (option)  
 Optional-

10	0.00000	EA	7257460	\$350.000000 \$0.000000
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**RADIOS, MOBILE**  
 Mobile Radio Remote Mt, Install, removal, program (optional)  
 Optional-

11	0.00000	EA	7257460	\$2,000.000000 \$0.000000
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**RADIOS, MOBILE**  
 Vehicular Repeater - VHF conventional mobile  
 VRS (VHF conventional mobile)

Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.

12	0.00000	EA	7257460	\$2,000.000000 \$0.000000
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**RADIOS, MOBILE**  
 Vehicular Repeater - Dual Band VRS  
 Dual Band VRS - (VHF conventional and 700/800 MHz P25 mobile), using 700/800 MHz P25 portable

Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.

13	0.00000	EA	7257460	\$2,750.000000 \$0.000000
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**RADIOS, MOBILE**  
 Vehicular Repeater - In Band 700 MHZ VRS P25 Solution  
 In Band 700 MHz P25 solution (700/800 MHz P25 mobile, using 700/800 MHz P25 portable)

Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.



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14	0.00000	EA	7257465  <b>REPEATERS, MOBILE, UHF</b> Programing and Installation Vehicular Repeater (optional) Optional- Programing and Installation Vehicular Repeater	\$350.00000 \$0.00000
15	0.00000	EA	7257465  <b>REPEATERS, MOBILE, UHF</b> Cables for above listed subscribers Cable 2 pack for above listed subscribers (minimum of 2 per subscriber type)  Qty 1 (requires 2)	\$173.00000 \$0.00000
16	0.00000	EA	7257461  <b>RADIOS, TWO-WAY, PORTABLE PACKAGE</b> Portable 700/800 MHz model 2 APX4000 700/800 MHz Portable - Model 2 - APX4000- P25 FDMA- P25 TDMA- 2 Year Repair Service Advantage (3 Year Total Warranty)  Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	\$2,612.00000 \$0.00000
17	0.00000	EA	7257461  <b>RADIOS, TWO-WAY, PORTABLE PACKAGE</b> Portable 700/800 MHz model 1 APX6000Li 700/800 MHz Portable - Model 1 APX6000- P25 FDMA- P25 TDMA- 2 Year Repair Service Advantage (3 Year Total Warranty)  Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	\$3,061.00000 \$0.00000
18	0.00000	EA	7257461  <b>RADIOS, TWO-WAY, PORTABLE PACKAGE</b> Portable 700/800 MHz model 2 APX6000Li 700/800 MHz Portable - Model 2 APX6000 P25 FDMA P25 TDMA  Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price. 2 Year Repair Service Advantage (3 Year Total Warranty)	\$3,211.00000 \$0.00000



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19	0.00000	EA	7257461	\$3,411.000000 \$0.000000
			<b>RADIOS, TWO-WAY, PORTABLE PACKAGE</b> Portable 700/800 MHz model 3 APX6000Li 700/800 MHz Portable - Model 3 APX6000 P25 FDMA P25 TDMA 2 Year Repair Service Advantage (3 Year Total Warranty)	
			Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	
20	0.00000	EA	7257461	\$82.000000 \$0.000000
			<b>RADIOS, TWO-WAY, PORTABLE PACKAGE</b> Add FM Battery to Main Model 700/800 MHz Portable - Model 1 Intrinsically Safe - APX4000 ALT: IMPRES LI-ION 2300MAH FM (QA00582)	
21	0.00000	EA	7257461	\$37.000000 \$0.000000
			<b>RADIOS, TWO-WAY, PORTABLE PACKAGE</b> Add FM Battery to Main Model 700/800 MHz Portable - Model 1, 2, 3 Intrinsically Safe - APX6000 ALT:LIION IMPRES FM/CSA 2300M (NNTN8092)	
22	0.00000	EA	7257460	\$2,995.000000 \$0.000000
			<b>RADIOS, MOBILE</b> Mobile -APX4500 700/800 MHz Low Tier - Dash Mount Mobile -APX4500 700/800 MHz Low Tier - Dash Mount	
			Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	
23	0.00000	EA	7257460	\$3,201.000000 \$0.000000
			<b>RADIOS, MOBILE</b> Mobile -APX4500 700/800 MHz Low Tier - Remote Mount Mobile -APX4500 700/800 MHz Low Tier - Remote Mount	
			Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	



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24	0.00000	EA	7257460	\$3,592.000000 \$0.000000
			<b>RADIOS, MOBILE</b>	
			Mobile -APX6500 700/800 MHz Mid Tier Dash Mount w/ O2 head	
			Mobile -APX6500 700/800 MHz Mid Tier Dash Mount w/ O2 head	
			Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	
25	0.00000	EA	7257460	\$3,540.000000 \$0.000000
			<b>RADIOS, MOBILE</b>	
			Mobile -APX6500 700/800 MHz Mid Tier remote Mount w/ O5 head	
			Mobile -APX6500 700/800 MHz Mid Tier remote Mount w/ O5 head	
			Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	
26	0.00000	EA	7257460	\$3,640.000000 \$0.000000
			<b>RADIOS, MOBILE</b>	
			Mobile -APX6500 700/800 MHz Mid Tier remote Mount w/ O7 head	
			Mobile -APX6500 700/800 MHz Mid Tier remote Mount w/ O7 head	
			Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	
27	0.00000	EA	7257460	\$1,176.000000 \$0.000000
			<b>RADIOS, MOBILE</b>	
			700/800 MHz Control Station with 100 ft coax and yagi	
			700/800 MHz Control Station with 100 ft coax and yagi	
			Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	
28	0.00000	EA	7257461	\$4,311.000000 \$0.000000
			<b>RADIOS, TWO-WAY, PORTABLE PACKAGE</b>	
			Multiband Portable APX 7000	
			Multiband Portable APX 7000	
			Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless	



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			Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	
29	0.00000	EA	7257461	\$37.000000 \$0.000000
			<b>RADIOS, TWO-WAY, PORTABLE PACKAGE</b> <b>Multiband Portable Intrinsically safe batteries</b> Multiband Portables Intrinsically Safe Add FM Battery to Main Model	
30	0.00000	EA	7257460	\$4,420.000000 \$0.000000
			<b>RADIOS, MOBILE</b> <b>Mobile - Multiband APX7500</b> Mobile - Multiband APX7500	
			Pricing listed represents a 50% discount off of Motorola's List Price. Pricing will remain firm for the period off the contract unless Motorola's list price should decrease. If Motorola's list price for this item decreases the state may receive 50% off the decreased Motorola list price.	
31	0.00000	EA	208	\$200.000000 \$0.000000
			<b>COMPUTER SOFTWARE FOR MICROCOMPUTERS (PREPROGRAMMED)</b> <b>Software - Iowa Radio Package Add to Main Model</b> Iowa Additional Feature Radio Package (Up-Tier from Li): DES Encryption (4000/4500 Either AES or DES) AES Encryption (4000/4500 Either AES or DES) GPS location OTAP Operation OTAR Operation (4000/4500 Not Support OTAR) Multikey option	
32	0.00000	EA	208	\$0.000000 \$0.000000
			<b>COMPUTER SOFTWARE FOR MICROCOMPUTERS (PREPROGRAMMED)</b> <b>Software - Project 25 Operation</b> Software - Project 25 Operation -Included at no cost.	
33	0.00000	EA	208	\$0.000000 \$0.000000
			<b>COMPUTER SOFTWARE FOR MICROCOMPUTERS (PREPROGRAMMED)</b> <b>Software - Phase 2 Operation</b> Software - Phase 2 Operation -Included at no cost.	
34	0.00000		72582	\$0.000000 \$0.000000
			<b>Two-Way Radio Supplies, Parts, and Accessories</b> <b>Accessory Discount - 20 percent</b> Motorola Two Way Radio Accessory Discount - 20 percent	



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35	0.00000	725		\$0.000000
				\$0.000000

**RADIO COMMUNICATION TELEPHONE AND TELECOMMUNICATION EQUIP**

**RADIOS added to the contract**

Radios that need to be added to the contract in the future will be added at 50% off of Motorola's List Price.

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**TERMS AND CONDITIONS**

**Terms & Conditions Service**

The parties agree to comply with the terms and conditions on the following web site which are by this reference made a part of the Agreement.

General Terms and Conditions for service contracts are posted at: [http://das.gse.iowa.gov/terms\\_services.pdf](http://das.gse.iowa.gov/terms_services.pdf)

**As Modified**

As Modified by Attachment 5: Special Terms and Conditions

**MA 005 4936-15**  
**ATTACHMENT 5**  
**SPECIAL TERMS**

- I. Section 6.3 - Insurance** of RFP #1013005265 is deleted in its entirety and replaced by the following:

**6.3 Insurance**

**6.3.1 Endorsement**

CONTRACTOR shall, at its sole expense, maintain in full force and effect, with insurance companies approved or authorized to conduct business in the State of Iowa and reasonably acceptable to the Agency, insurance covering its work of the type and in amounts required by this Contract. CONTRACTOR's insurance shall insure against loss or damage arising during and resulting from or related to CONTRACTOR's performance of this Contract regardless of the date the claim is filed or expiration of the policy, except for claims barred by an applicable statute of limitations. All insurance policies required by this Contract shall: (i) remain in full force and effect for the entire term of this Contract; and (ii) not be canceled without prior written notice to the Agency. The State of Iowa and the Agency shall be included as additional insureds on all such policies, and all such policies shall include blanket endorsements whereby The State of Iowa and the Iowa Department of Administrative Services are included as additional insureds. The coverage afforded shall be primary. If the State of Iowa or the Iowa Department of Administrative Services has other insurance which is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance." Unless otherwise requested by the Agency, CONTRACTOR shall cause to be issued insurance policies with the coverages set forth below:

**6.3.2 Types and Amounts of Insurance:**

Type of insurance	Limit	Amount	
General Liability (including contractual liability) written on an occurrence basis	General Aggregate  Products – Comp/Op Aggregate  Personal injury Each Occurrence  PROPERTY Damage Each Occurrence	\$10 million	\$5 million \$5 million
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	Each Accident	\$5 million
Errors and Omissions Insurance	Each Claim	Aggregate	\$2 million
		Each Occurrence	\$2 million

**6.3.3. Claims Provision**

All insurance policies required by this Contract must provide coverage on an “occurrence basis” for all claims arising from activities occurring during the term of the Contract regardless of the date the claim is filed or expiration of the policy , except for claims barred by an applicable statute of limitations.

**6.3.4 Certificates of Coverage**

At the time of execution of this Contract, CONTRACTOR shall deliver to the Agency certificates of insurance evidencing the types and the amounts of coverage, in force

before the CONTRACTOR starts work, and stating that the State of Iowa and the Iowa Department of Administrative Services are included as additional insured on the policies of insurance as required herein. All certificates of insurance shall be issued on an Acord form.

### **6.3.5 Liability of CONTRACTOR**

Acceptance of the insurance certificates by the Agency shall not act to relieve CONTRACTOR of any obligation under this Contract. It shall be the responsibility of CONTRACTOR to keep the respective insurance policies and coverages current and in force during the life of this Contract. CONTRACTOR shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the CONTRACTOR shall have no claim or other recourse against the State or the Agency for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the CONTRACTOR. Notwithstanding any other provision of this Contract, CONTRACTOR shall be fully responsible and liable for meeting and fulfilling all of its obligations under Section 6 of this Contract.

### **6.3.6 Filing of Claims**

In the event either the Agency or the State suffers a loss covered by any of the required policies and is unable to file a claim under any policy of insurance required under this Contract, the CONTRACTOR shall, at the Agency's request, immediately file a proper claim under such policy. CONTRACTOR will provide the Agency with proof of filing of any such claim and keep the Agency fully informed about the status of the claim. In addition, CONTRACTOR agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the Agency and the State. CONTRACTOR shall pay to the Agency and the State any insurance proceeds or payments due to the Agency and the State that CONTRACTOR receives in connection with any such claim immediately upon CONTRACTOR'S receipt of such proceeds or payments.

### **6.3.7 Proceeds**

In the event the Agency or the State suffers a loss that may be covered under any of the insurance policies required under Section 6, neither the CONTRACTOR nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Agency and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits).

**II. The following revisions are made to Attachment 2: General Terms and Conditions for service contracts posted at [http://das.gse.iowa.gov/terms\\_services.pdf](http://das.gse.iowa.gov/terms_services.pdf).**

**E. Termination—Section 1 is deleted in its entirety and replaced by the following. All other sections remain the same.**

**1. Termination for Cause.** If a party to this Contract (breaching party) is in breach of any material term, condition or provision of this Contract, the other party (non-breaching party) may provide written notice of such breach, giving the breaching party thirty (30) days after receipt of the notice of breach to either (i) cure the breach or (ii) if the breach is not curable within thirty (30) days, to provide a written cure plan for the non-breaching party's approval. The breaching party shall begin implementing the cure plan immediately after receipt of the non-breaching party's approval thereof. If the breaching party fails to cure the breach within the time period established in the cure plan, the non-breaching party shall have the right immediately to terminate the Contract. 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:

- i. Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is intentionally false or is deceptive or materially incorrect or incomplete;
- ii. 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, in the implementation of the work performed pursuant to this Contract;
- iii. Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- iv. Contractor terminates or suspends its business;
- v. 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;
- vi. 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;
- vii. 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;

viii. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or

ix. 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:

- a. 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;
- b. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- c. Making an assignment for the benefit of creditors;
- d. 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
- e. 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.

**F. Confidential Information—Section F is deleted in its entirety and replaced by the following:**

**1. Access to Confidential Information.** The parties' employees, agents and subcontractors may have access to confidential information maintained by the party to the extent necessary to carry out its responsibilities under the Contract. Confidential information does not include any information that: is or becomes publicly known through no wrongful act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Contract, in the receiving party's possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing party. Confidential information is and will at all times remain the property of the disclosing party, and no grant of any proprietary rights in the confidential information is given or intended, including any express or implied license, other than the limited right of the receiving party to use the confidential information in the manner and to the extent permitted by this Contract. Upon termination of this Contract, each party will return the other party's confidential information. Upon written request, 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.

**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.

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

**4. Reporting of Unauthorized Disclosure.** A party shall immediately report to the other party any unauthorized disclosure of the other party's confidential information.

**5. Survives Termination.** The parties' obligations under this section shall survive termination or expiration of this Contract.

**G. Indemnification—Section G is deleted in its entirety and replaced by the following:**

**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, without limitation:

- i. Any breach of this Contract;
- ii. Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- iii. The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;
- iv. 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;
- v. Contractor provides an indemnification right for breach of certain third party intellectual property rights as set forth in section 2 of the attached Supplemental Terms and Conditions.

**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.

**3. Agency Cooperation.** Contractor's duties to defend and indemnify are conditioned upon: the Agency promptly notifying Contractor in writing of the claim; Contractor having sole control of the defense of the suit and all negotiations for its settlement or compromise; and the Agency providing to Contractor reasonable cooperation and, if requested by Contractor, reasonable assistance in the defense of the claim, at Contractor's expense.

**H. Insurance-- Section H is deleted in its entirety and replaced by the following:**

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

**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 in the RFP for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

**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 notice to the Agency, with replacement certificates provided. 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 on an AcorD form. 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. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

**I. Project Management & Reporting—Section I is deleted in its entirety and replaced by the following:**

**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.

**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.

**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:

- i. Any event not within the control of the Contractor or the Agency that accounts for the problem;
- ii. Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;
- iii. Damages incurred as a result of any party's failure to perform its obligations under this Contract; and
- iv. Any request or demand by one party that another party believes is not included within the terms of this Contract.

**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.

**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:

- i. **Written Request.** The Agency shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.
- ii. **The Contractor's Response.** The Contractor shall submit to the Agency a firm cost proposal for the requested change order and proposed change in the performance schedule within five (5) business days of receiving the change order request.
- iii. **Acceptance of the Contractor Estimate.** If the Agency accepts the cost proposal and/or change in performance schedule, if any, presented by the Contractor, the parties shall reflect such changes in a change order. Contractor shall provide the modified Deliverable subject to the cost proposal and revised performance schedule, if any,

included in the change order. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract.

iv. 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.

**K. Intellectual Property—Section K is deleted in its entirety and replaced by the following:**

**1. Ownership and Assignment of Other Deliverables.** Contractor agrees that the State and Agency shall become the sole and exclusive owners of all Deliverables. Aside from any software that may be included in the Deliverables (which will be licensed pursuant to the terms included in this Agreement) Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables. 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. 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. Notwithstanding the foregoing, any and all preexisting intellectual property rights shall remain fully vested in the original owner of those rights and nothing herein shall be construed as a transfer of those rights.

**L. Warranties-- Section L is deleted in its entirety and replaced by the following:**

**1. Construction of Warranties Expressed in this Contract with Warranties Implied by Law.** THE WARRANTIES INCLUDED IN THE MOTOROLA PROPOSAL AT SECTION 18 ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**2. Contractor represents and warrants that:** (i) 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; (ii) 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; (iii) Contractor does not and will not grant any third party rights in any Deliverables to any Agency that are inconsistent with the rights granted it by a third

party; and (iv) the Agency shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

**3. Contractor represents and warrants that:** (i) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (ii) 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, , 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 within five (5) business days of 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.

**4. Contractor represents and warrants that the Deliverables (in whole and in part) shall:** (i) be free from material Deficiencies; (ii) 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; and (iii) comply with the warranty provisions included in the proposal and elsewhere in this Agreement. 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 (5) business days of receiving notice of such Deficiencies or failures from the Agency . 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.

**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 and provides supporting information regarding services Contractor has performed that do not meet 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.

**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 statutory and regulatory requirements of the Iowa Department of Administrative Services, Information Technology Enterprise.

**7. Obligations Owed to Third Parties.** Unless otherwise agreed to between the parties in an amendment to this Contract, 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.

**N. Contract Administration-- Section N is deleted in its entirety and replaced by the following:**

**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).

**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 (including the Supplemental Terms and Conditions below) 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 material 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.

**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 unless expressly set out therein; provided, however, that if there is conflict or inconsistency between the obligations of the Agency as expressed as the Bid Proposal and the obligations of the Agency as expressed in the RFP or the Contract (including these general terms and conditions), and the Agency has not otherwise accepted the obligations imposed on it by the Bid Proposal, the provisions of the RFP or Contract shall take precedence over those in the Bid Proposal.

**4. Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when providing Deliverables under this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC chapter 4. 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.

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

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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:

- i. At the time it is actually received; or,
- ii. Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

iii. 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.

**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.

**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.

**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.

**24. Authorization.** Contractor represents and warrants that:

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

ii. 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.

**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.

**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, 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.

In no circumstances will the Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose its product cost data.

**27. Audits.** Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Agency 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. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Agency that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. Contractor shall provide the Agency with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors. In no circumstances will the Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose its product cost data.

**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.

**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.

**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.

**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.

**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 commercially reasonable 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 commercially reasonable 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. If a force majeure event occurs, the parties will execute a change order to extend the performance schedule for a time period that is reasonable under the circumstances.

**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 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.

**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.

**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(42) & (43). 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.

**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.

**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.

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

**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.

**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.

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

**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.

**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](#)

**44. No Minimums Guaranteed.** The contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

**45. Ownership and Title.**

Upon purchase the State shall own the Deliverables (aside from any software that may be included in the Deliverables which shall be licensed pursuant to the terms included elsewhere in this Agreement). Contractor, its licensors, and its suppliers retain all of their intellectual proprietary rights in any form in the Deliverables, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Deliverables. All intellectual property developed, originated, or prepared by Contractor in connection with providing the Deliverables, remains vested exclusively in Contractor, and the State will not have any shared development or other intellectual property rights. The license of software Deliverables is described in the Supplemental Terms and Conditions attached and incorporated into these General Terms and Conditions for Services Contracts/Solicitations.

### III. The following Software License Terms are hereby added to MA 005 4936-15:

#### 1. License to Software.

1.1 Subject to the payment of the purchase price for the Deliverables, Contractor grants to the State a non-exclusive license to the Software included in the Deliverables solely in connection with the use of the Deliverables by the State, its agencies and political subdivisions, and their employees and agents. Any open source software included in the Deliverables is licensed by Contractor under its own respective license agreement and not under the terms included herein. Contractor represents and warrants to the State that unless the State uses the open source software to compile software code, the State's use of the Deliverables as provided in this Contract will comply with the open source software license terms; Contractor shall defend and indemnify the State from any claims brought against the State by the owner of Open Source Software, as provided in Section 2 of these Software License Terms. The license does not grant any rights to source code. No rights are granted to the State under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to the State under this Agreement. "Software" (i) means the proprietary software included in the Deliverables in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Contractor.

1.2 The State will not, and will not allow or enable any third party to: attempt to recreate the source code; modify, adapt, create derivative works of or merge the Software; copy, reproduce, or distribute the Software; remove, alter or obscure any copyright or other notice of Contractor's proprietary rights; or provide, copy, transmit, disclose, divulge or make the Software available to, or permit the use of the Software by, any third party except as authorized in this Agreement. The State may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that the State may not operate that copy of the Software at the same time as the original Software is being operated. The State may make as many copies of the Software documentation as it may reasonably require for the internal use of the Software.

1.3 Unless otherwise authorized by Contractor in writing, the State will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Deliverable; or (ii) copy onto or transfer Software installed in one unit of a Deliverable onto one other device. The State may temporarily transfer Software installed on a Deliverable to another device if the Deliverable is inoperable or malfunctioning, if the State provides written notice to Contractor of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Deliverable is returned to operation and the Software must be removed from the other device. The State must provide prompt written notice to Contractor at the time temporary transfer is discontinued.

1.4 The State will not transfer the Software or documentation to any third party without prior written notice to the State. Contractor's consent may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by these Software License Terms. If the Deliverables are Contractor's radio products and the State transfers ownership of Contractor radio products to a third party, the State may assign its right to use the Software which is embedded in or furnished for use with the radio products; *provided* that the State transfers all copies of the Software and documentation associated with the radio products transferred to the transferee. Notwithstanding the foregoing, RSS and Motorola's FLASHport® software and the related documentation shall not be assigned as these software are not required for the radio products to function but are required to program changes to the radios. These software may be licensed separately by future transferees.

1.5 The State's right to use the Software and documentation will begin when this Agreement is signed by both parties and will continue for the life of the Deliverables with which or for which the Software and documentation have been provided by Contractor, unless the State commits a material, uncured breach of the Software License Terms (which breach must be cured within five (5) business days), in which case this the State's right to use the Software and documentation may be terminated immediately upon notice by Contractor.

1.6 Within thirty (30) days after termination of the license to use the Software, the State must certify in writing to Contractor that all copies of the Software have been removed or deleted from the Deliverables and that all copies of the Software and documentation have been returned to Contractor or destroyed by the State and are no longer in use by the State.

## 2 INTELLECTUAL PROPERTY INDEMNIFICATION

2.1 Contractor will defend at its expense any suit brought against the State to the extent it is based on a third-party claim alleging that a Deliverable infringes an intellectual property right, proprietary right, or personal right, or misappropriates a trade secret of a third party ("Infringement Claim"). Contractor's duties to defend and indemnify are conditioned upon: the Agency promptly notifying Contractor in writing of the Infringement Claim; Contractor having sole control of the defense of the suit and all negotiations for its settlement or compromise; and the Agency providing to Contractor reasonable cooperation and, if requested by Contractor, reasonable assistance in the defense of the Infringement Claim, at Contractor's expense. In addition to Contractor's obligation to defend, and subject to the same conditions, Contractor will pay all damages finally awarded against the Agency by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Contractor in settlement of an Infringement Claim and will reimburse the Agency for its reasonable expenses incurred in providing cooperation and assistance as requested in Contractor's defense of the Infringement Claim.

2.2. If an Infringement Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense: (a) procure for the Agency the right to continue using the

Deliverable; (b) replace or modify the Deliverable so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Deliverable and promptly refund the Agency the sums paid by the Agency for the Deliverable.

2.3. Contractor will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the Agency's combination of the Deliverable with any software, apparatus or device not furnished by Contractor; (b) the Agency's use of ancillary equipment or software not furnished by Contractor and that causes the Deliverable to be infringing; (c) a Deliverable designed or manufactured in accordance with the Agency's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) modification of the Deliverable by a party other than Contractor; (e) use of the Deliverable in a manner for which the Deliverable was not designed or that is inconsistent with the terms of this Contract; or (f) the failure by the Agency to install an enhancement release to the Deliverable that is intended to correct the claimed infringement.

2.4. This Section 2 provides the Agency's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement Claim.