Department of Management
Contracts Declaration & Execution ("CD&E")

Title of Contract (the "Agreement"): Broadband Support	**Contract Number: 2023-BUS-927**
RFP: 0423-185-01	

1. Contracting Agency Information

Department of Management (**"DOM"**)

Main Business Address:	**Billing Address/Contact:**	**Address for formal notices ("Notice Address"):**
Department of Management 200 E. Grand Ave. Des Moines, IA 50309	Department of Management Attn: Patrick Forck 200 E. Grand Ave. Des Moines, IA 50309 ocioinvoices@iowa.gov das.finance.payables@iowa.gov	Dept of Management Attn: Matt Behrens, CIO 200 E. Grand Ave. Des Moines, IA 50309 email: matt.behrens@iowa.gov

2. Vendor Information

Business Name of Vendor ("Vendor"):	**Organized/incorporated under the laws of:**
Guidehouse Inc.	Delaware

Main Business Address:	**Billing Address/Contact:**	**Address for formal notices ("Notice Address"):**
1676 International Dr., Ste.800 McLean, VA 22102	PO Box 7247-6037 Philadelphia, PA19170-6037	1676 International Dr., Ste. 800 McLean, VA 22102.

3. Term of Contract

Contract Begin Date: (the **"Effective Date"**):	**Base Contract Term End Date:** 6/30/2026	**Possible Yearly Extensions after Base Term:** 7	**Terminal Date of Contract (inclusive of extensions):** 6/30/2033
the date of last signature below.			

4. Purpose. This Agreement establishes the terms and conditions pursuant to which the Agency may procure Community Outreach services as well as Grant Administration services, as contemplated by and in accordance with the RFP and as set forth in the Proposal.

5. **Documents Incorporated/Order of Precedence.** This Agreement is composed of multiple parts which, when enumerated below, are each incorporated into and made part of this Agreement by this reference. In the event of any conflict or inconsistency between the specific provisions of an incorporated part, any such conflict or inconsistency shall be resolved in the following order:
    1. Any declarations and/or representations made on this CD&E;
    2. Attachment A - General Terms and Conditions;
    3. Attachment B – Special Terms and Conditions;
    4. The RFP;
    5. The provisions of Vendor's Proposal submitted in response to the RFP. For the sake of clarity, none of Vendor's exceptions, objections, or proposed modifications respecting the Agreement or any terms associated therewith, including to a draft of this Agreement (collectively "Vendor Exceptions"), shall be incorporated into this Agreement unless expressly set forth herein.

6. Availability of Contract to Other Entities. All other agencies of the State of Iowa and all political subdivisions of the State of Iowa, or another State or U.S. Territory and their political subdivisions (in accordance with their own procurement regulations as applicable) may make purchases pursuant to the Contract as permitted by the RFP.

7. **Signatures.**

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties have caused their respective duly authorized representatives to execute this Agreement, which is effective as of the Effective Date.

Department of Management:		**Guidehouse Inc.:**	
By:		By:	
Name:	Kraig Paulsen	Name:	Jeff Bankowski
Title:	Director	Title:	Partner
Date:	January 5, 2024	Date:	December 27, 2023

Attachment A

General Terms and Conditions

The parties may be referred to herein individually as a **"Party"** or collectively as the **"Parties."** The Parties agree to the following:

1. **Definitions.** In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

   1.1. **"Acceptance"** means the Agency has determined a portion of the Deliverables satisfy its Acceptance Tests. **"Final Acceptance"** means the Agency has determined all Deliverables satisfy the Agency's Acceptance Tests. **"Non-acceptance"** means the Agency has determined that a portion of or all of the Deliverables have not satisfied the Agency's Acceptance Tests.

   1.2. **"Acceptance Criteria"** means the Specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, or other criteria designated in a Purchasing Instrument and against which Acceptance Tests are conducted, including any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, the RFP, the Proposal, any Documentation, and any applicable state, federal, foreign, and local laws, rules, and regulations.

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

   1.4. **"Agreement," or "Contract"** unless the context requires otherwise, means the collective documentation memorializing the terms of the agreement identified on the CD&E and all other attachments to the CD&E, accompanying the CD&E, or executed under or pursuant to the Agreement.

   1.5. **"Application Services"** means the hosted applications and related Services as may be further defined and described in the RFP, Proposal, and Special Terms and Conditions attached hereto and labeled "Application Services/System(s) Description and Related Fees," and related Purchasing Instruments," including any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the Agency's specific needs or use.

   1.6. **"Authorized Contractors"** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by the Agency or any State Users to use, maintain, support, modify, enhance, host, or otherwise assist the Agency with any Deliverables provided hereunder.

   1.7. **"Confidential Information"** means, subject to any applicable federal, state, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party ("Disclosing Party") to the other Party ("Receiving Party") that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent Third Party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency, or regulatory authority, or by applicable regulatory or professional standards and in compliance with Section 10.1.3 (*Compelled Disclosures*) of this Agreement; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

1.8. **"Customer Data"** means all information, data, materials, or documents (including Confidential Information and Personal Data) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from the Agency, the State of Iowa, State Users, or Users, directly or indirectly, including from any Authorized Contractors of any of the foregoing, related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor in connection with any Customer-Owned Deliverables provided hereunder and all originals and copies of any of the foregoing.

1.9. **"Customer Property"** means any property, exclusive of any Vendor-Owned Deliverables, whether tangible or intangible, of or belonging to the Agency, including Customer Data and Customer-Owned Deliverables, software, hardware, programs, or other property possessed, owned, or otherwise controlled, maintained, or licensed by the Agency, including Third Party Software or Third Party Intellectual Property.

1.10. **"Customer-Owned Deliverables"** means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of the Agency or for a specific project under this Agreement, including all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto, including related Documentation.

1.11. **"Deficiency"** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related to a Deliverable(s), including any failure of a Deliverable(s), to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable(s).

1.12. **"Deliverables"** means all of the goods, work, work product, items, materials, and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with this Agreement, including the Value-Added Services, Documentation, including as may be more specifically identified, defined, and agreed upon in a Purchasing Instrument executed hereunder.

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

1.14. **"Governmental Entity"** shall include any governmental entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity includes the Executive Branch, Legislative Branch, Judicial Branch, agencies, independent agencies, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government, including political subdivisions or other local governmental entities.

1.15. **"I.T. Governance Document(s)"** or **"Governance Document(s)"** means any Information Technology policies, standards, processes, guidelines, or procedures developed by DOM and appended to this Agreement.

1.16. **"Personal Data"** means any information relating to an identified or identifiable person, including, but not limited to, Social Security or other government-issued identification numbers, account security information, financial account information, credit/debit/gift or other payment card information, account passwords, intellectual property, document identification number, and sensitive or personal data (or equivalent terminology) as defined under any law, statute, directive, regulation, policy, standard, interpretation, order (including any and all legislative or regulatory amendments or successors thereto) regarding privacy, data protection, information security obligations, or the processing of personal data. For the avoidance of doubt, Personal Data shall include:

1.16.1. **"Federal Tax Information"** or **"FTI,"** as defined by Internal Revenue Service ("IRS") Publication 1075 ("Pub 1075"), *available at* https://www.irs.gov/pub/irs-pdf/p1075.pdf, and corresponding Internal Revenue Code ("IRC") rules and regulations;

1.16.2. Any data or information covered under or protected by Iowa Code chapter 715C; and

1.16.3. Any data or information covered under or protected by Iowa Code sections 422.20 and 422.72.

For purposes of this definition and this Agreement, **"Process"** or **"Processing"** or **"Processed"** shall mean any operation or set of operations performed upon the Personal Data, whether or not by automatic means, including collection, recording, organization, use, transfer, disclosure, storage, manipulation, combination, and deletion of Personal Data.

1.17. **"Proposal"** or **"Vendor's Proposal"** means Vendor's Response to the RFP.

1.18. **"Purchasing Instrument"** means an individual transactional document executed hereunder for the purchase of Services or Deliverable(s) pursuant to this Agreement, including a **"Purchase Order"** or **"Statement of Work"** executed hereunder (*see* the Sample Purchasing Instrument/Statement of Work attached hereto for a sample Statement of Work), regardless of form, and which identifies the specific Services or Deliverable(s) to be purchased and any Acceptance Criteria or Specifications related thereto.

1.19. **"Security Breach"** means the unauthorized acquisition of or access to Customer Data, or related Deliverables by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, or related Deliverables, including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. **"Security Breach"** shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.

1.20. "**Services**" may include:

1.20.1. Services as awarded in the RFP Notice of Intent to Award issued on May 3, 2023.

1.20.2. Any other services within the scope of the RFP and Proposal, including services considered Value-Added Services, including as may be further defined, described, and agreed upon by the Parties in a Purchasing Instrument executed hereunder.

1.21. **"Software"** means any and all other software, programs, applications, modules, and components, in object code form, all related Documentation, Enhancements, and Source Code, and all copies of the foregoing.

1.22. **"Source Code"** means the human-readable source code, source program, scripts, or programming language, including, but not limited to, HTML, XML, XHTML, Visual Basic, and JAVA, for or related to any Software. Source Code includes all source code listings, instructions (including compile instructions), programmer's notes, commentary, and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.

1.23. **"Special Terms and Conditions"** means any attachment hereto entitled, in whole or in part, **"Special Terms and Conditions."**

1.24. **"Specifications"** means any and all specifications, requirements, technical standards, performance standards, representations, warranties, criteria, and other specifications related to any Deliverables, described or stated in this Agreement (including any exhibit or documentation attached to, or provided in connection with, this Agreement), any Purchasing Instrument(s), the RFP, the Proposal, and, solely to the extent not inconsistent with the foregoing, the Documentation.

1.25. **"State Users"** means the State of Iowa, the Agency, DOM, and any other Governmental Entity as may be later designated by the Agency in its sole discretion and communicated to Vendor in writing, and any employees or Authorized Contractors of any of the foregoing.

1.26. **"System(s)"** means any system that may be further defined and described in Purchasing Instruments, including any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the Agency's specific needs or use.

1.27. **"Third Party"** means a person or entity (including any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

1.28. **"Third Party Intellectual Property"** shall mean intellectual property, including Third Party Software, licensed, made, conceived, or developed by a Third Party and provided or used by or on behalf of the Agency or Vendor, as applicable, including:

1.28.1. As it relates to intellectual property provided to the Agency by Vendor, intellectual property comprising or embedded in the Application Services, System(s), or any other Services or Deliverables provided by Vendor under this Agreement, including any Third Party Software used by or on behalf of Vendor to host the Application Services or System(s);

1.28.2. As it relates to intellectual property provided to Vendor by the Agency, intellectual property comprising or embedded in any Customer Property, including any Third Party Software licensed to the Agency and accessed or used by Vendor in transitioning the Agency from legacy applications and systems to the Application Services and System(s) provided by Vendor hereunder.

1.29. **"Third Party Software"** means any software owned or licensed by a Third Party.

1.30. **"Users"** means the State Users and any other users of the Application Services or System(s), including external entities or individuals who may enter, upload, download, import, or otherwise access data or information into the System(s) through public-facing web interfaces.

1.31. **"Value-Added Services"** means products, equipment, hardware, Software, or services the Agency procures through Vendor or Vendor Contractors, directly or indirectly, hereunder, including goods or services:

1.31.1. Which may have been expressly identified in the RFP or Proposal as optional goods or services available for purchase hereunder; or

1.31.2. Which are otherwise generally deemed incidental to the total transaction.

1.32. **"Vendor,"** in addition to its meaning in the CD&E, shall, unless the context clearly requires the contrary, be deemed to include Vendor Contractors and Vendor Personnel.

1.33. **"Vendor Personnel"** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Services or Deliverables under this Agreement.

1.34. **"Vendor Contractor(s)"** means any of Vendor's authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Services or Deliverables under this Agreement.

2. Services and Deliverables.

2.1. Performance.

2.1.1. *Generally.* Vendor shall commence, complete, and deliver all work and provide all Services and Deliverables as defined by, described by, and in accordance with the terms, conditions, requirements, Specifications, and Acceptance Criteria forth in this Agreement, including any Special Terms and Conditions, any Purchasing Instrument(s) executed by the Agency hereunder, the RFP, the Proposal, and any Service Level Agreement or any related attachments or documents attached hereto or associated herewith, including a "project plan(s)" or other similarly captioned document. Except as otherwise set forth herein or in a Service Level Agreement attached as Special Terms and Conditions hereto, performance standards, monitoring, and review provisions applicable to specific projects are as set forth in the applicable Purchasing Instrument.

2.1.2. *Purchasing Instruments.*

2.1.2.1. *Generally.* The Agency and Vendor may execute individual Purchasing Instrument(s) identifying specific Services or Deliverables to be purchased and provided hereunder and defining related Acceptance Criteria, Specifications, or terms and conditions associated with the performance and provisioning of such Services or Deliverables. Individual Purchasing Instruments will be effective and become valid and enforceable only when signed by both the Agency and Vendor. Once a Purchasing Instrument has been executed, Vendor will carry out and complete the duties and responsibilities set forth in the applicable Purchasing Instrument in accordance with the terms, conditions, requirements, Specifications, and Acceptance Criteria set forth in this Agreement, including any Special Terms and Conditions, the Purchasing Instrument, the RFP, the Proposal, and any Service Level Agreement or any related attachments or documents attached hereto or associated herewith, including a "project plan(s)" or other similarly captioned document.

2.1.2.2. *Amendments to Purchasing Instruments.* A Purchasing Instrument may be amended, modified, or replaced at any time during the Term upon the mutual written consent of Vendor and the Agency.

2.1.2.3. *Change Order Procedure.* The Agency may at any time request a modification to the scope of a Purchasing Instrument using a change order. The following procedures for a change order shall be followed:

2.1.2.3.1. *Written Request.* The Agency shall specify in writing the desired modifications to the Purchasing Instrument with the same degree of specificity as in the original Purchasing Instrument.

2.1.2.3.2. *Vendor's Response.* Vendor shall submit to the Agency any proposed modifications to the Purchasing Instrument and a firm cost proposal, if applicable, for the requested change order within ten (10) business days of receiving the Agency's change order request, unless a longer period of time is mutually agreed by the parties.

2.1.2.3.3. *Effect of Change Order.* Both Parties must sign and date the change order to authorize the change in the Services or Deliverable(s) described therein and incorporate the changes into the applicable Purchasing Instrument and this Agreement. No Services or Deliverable(s) shall be provided pursuant to the change order, and no payment shall be made on account of the change order until the change order is fully executed by both Parties. Upon such execution, a change order shall alter only that portion of a Purchasing Instrument to which it expressly relates and shall not otherwise affect the terms and conditions of the Purchasing Instrument or this Agreement.

2.1.3. *Delivery.*

2.1.3.1. *Risk of Loss.* To the extent any Deliverable(s), including any hardware or equipment, are mailed or shipped, Vendor or Vendor Contractors shall bear all freight, shipping, handling, and insurance costs for the delivery and shall bear all risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.

2.1.3.2. *Documentation.* Vendor acknowledges and agrees that it or Vendor Contractors shall, at no charge to the Agency, deliver and provide to the Agency all Documentation related to the Deliverable(s) that are created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, unless otherwise agreed to by the Agency in writing.

2.1.4. *Value-Added Services.* The Agency may procure Value-Added Services through Vendor. Vendor shall take all action necessary to ensure the Agency is able and entitled to receive and enjoy all warranties, indemnities, or other benefits associated with Value-Added Services provided hereunder. At the Agency's request, Vendor shall assign to the Agency all of licensor's and manufacturer's warranties, indemnities, or other associated benefits pertaining to such Value-Added Services under any related license agreement or other agreement between Vendor and the applicable Third Party.

3. Compensation and Additional Rights and Remedies.

3.1. Pricing/Compensation. The fees for the Services and Deliverables shall be in accordance with the RFP and Proposal and as set forth in the applicable Purchasing Instrument.

Failure of the Agency to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of any Services or Deliverables so long as payment of such undisputed fees is made within the applicable cure period.

3.2. No Additional Fees. Other than as permitted by Section 3.1 (*Pricing/Compensation*), the Agency shall not be obligated to pay any other amounts to Vendor in connection with this Agreement or any Purchasing Instrument(s).

3.3. Satisfactory Performance. Vendor is not entitled to payment for any Services or Deliverable(s), in whole or in part, provided under this Agreement or any Purchasing Instrument(s) if the Agency reasonably determines that such Services or Deliverable(s) have not been satisfactorily or completely delivered or performed in accordance with the Acceptance Criteria set forth in the applicable Purchasing document.

3.4. Effect of Purchasing Instruments. Purchasing Instruments may contain terms that are in conflict with or inconsistent with the terms and conditions of this Agreement. Such

Purchasing Instrument terms only apply to the scope of work identified in the Purchasing Instrument and do not alter the agreed terms in this Agreement. Notwithstanding the foregoing, the following terms of this Agreement shall always control regardless of any contrary terms that may be in a Purchasing Instrument:

3.4.1. Information contained on the CD&E;

3.4.2. The definition of Confidential Information;

3.4.3. Set-off obligations under Section 3.8 (*Set-off Against Sums Owed by Vendor*);

3.4.4. Rights of the Federal and State Government under Section 5.8 (*Rights of the Federal and State Government*);

3.4.5. Compliance with the Law under Section 6.5 (*Compliance with Law*);

3.4.6. No Conflicts obligations under Section 6.6 (*No Conflicts*);

3.4.7. Termination provisions in Section 9 (*Termination*);

3.4.8. Confidentiality obligations under Section 10 (*Confidentiality*);

3.4.9. The General Provisions set forth in Section 12 (*General Provisions*); and

3.4.10. The payment terms and covered services identified in the Special Terms and Conditions.

The terms of this Agreement may only be altered through formal amendment of this master agreement.

3.5. Payment does not Imply Acceptance. Payment, including final payment, shall not be construed as acceptance of any Services or Deliverables with Deficiencies, Errors, or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the Agency shall operate as a release of any and all claims related to this Agreement.

3.6. Invoices. Upon receipt of written notice of Acceptance from the Agency, Vendor shall submit an invoice to the Agency requesting payment of the fees or other compensation to which it is entitled under Section 3.1 (*Pricing/Compensation*), less any applicable offsets. The Agency shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code section 8A.514 and corresponding implementing rules, regulations, and policies. The Agency may pay in less than 60 days, but an election to pay in less than 60 days shall not, to the extent applicable, act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Agency shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Agency believes the invoice does not conform with the requirements set forth in this Agreement.

3.7. Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Agency the full amount of any overpayment or erroneous payment within 10 business days after either discovery by Vendor or notification by the Agency of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Agency under this Section 3.7 (*Erroneous Payments and Credits*), the Agency may charge interest of one percent per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount otherwise allowed by law, whichever is greater. The Agency may, in its sole discretion, elect to have Vendor apply any amounts due and owing the Agency under this Section 3.7 (*Erroneous Payments and Credits*) against any amounts payable by the Agency under this Agreement.

3.8. Set-off Against Sums Owed by Vendor. In the event Vendor owes the Agency any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Agency may set off such sum against any sum invoiced to the Agency by Vendor in the Agency's sole discretion. Any amounts due the Agency as damages may be deducted by the Agency from any money or sum payable by the Agency to Vendor pursuant to this Agreement or any other agreement between Vendor and the Agency.

3.9. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the Agency or work stoppage by Vendor, in the event the Agency determines:

3.9.1. Vendor has materially failed to perform any of its duties or obligations as set forth in this Agreement; or

3.9.2. Any Deliverable has failed to meet or conform to any applicable Acceptance Criteria or Specification(s) or contains or is experiencing a material Deficiency or Error(s).

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

3.10. Correction/Cure. The Agency may correct any Deficiencies or Errors with respect to any Deliverable(s), or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies or Errors as required in this Agreement or if Vendor otherwise defaults or materially fails to perform any provision of the Agreement within the time period specified in a notice of default from the Agency. The Agency may procure the Deliverable(s) reasonably necessary to correct any Deficiencies or Errors or cure any Vendor default, in which event Vendor shall reimburse the Agency for the actual costs incurred by the Agency for such Deliverable(s) or cure, including the reasonable value of the time expended by the Agency's personnel or its Authorized Contractors to secure substitute Deliverable(s) or cure such default, but in no event shall such reimbursement exceed the amount that would otherwise be paid to Vendor under the applicable Purchasing Document under which such Deficiencies or Errors arose. In addition, Vendor shall cooperate with the Agency or any Third Parties retained by the Agency which assist in curing such default, including by allowing access to any pertinent materials, work product, or intellectual property of Vendor's.

3.11. Error Correction. With respect to each notice from the Agency to Vendor during the Term that notifies Vendor that any Deliverable(s)provided by Vendor contains or experiences a Deficiency or Error, Vendor shall, at no cost to the Agency, promptly:

3.11.1. Correct the Deficiency or Error and repair the affected Deliverable(s); and

3.11.2. Provide the Agency with all necessary and related materials related to such repaired or corrected Deliverable(s), and related Documentation.

3.12. Repayment Obligation. In the event that any State of Iowa or federal funds are deferred or disallowed as a result of any audits or, to the extent caused by the Vendor, expended in violation of the laws applicable to the expenditure of such funds, Vendor will be liable to the Agency for the full amount of any claim disallowed (or the amount of funds expended in violation of such applicable laws) and for all related penalties incurred. If the State of Iowa or any federal agency concludes Vendor has been paid for any cost that is unallowable, unallocable, or unreasonable under this Agreement, Vendor will be liable to the Agency for such cost. Vendor shall pay to the Agency all amounts for which the Vendor is liable under this Section 3.12 (*Repayment Obligation*) within 10 business days of receiving the Agency's written demand or written notice. The Agency may withhold any payment under this Agreement if Vendor fails to timely make any payment required by this Section 3.12 (*Repayment Obligation*).

3.13. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 3 (*Compensation and Additional Rights and Remedies*) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

4. Acceptance Tests, Project Management, and Program Management.

4.1. Acceptance Testing. All Deliverables shall be subject to the Agency's Acceptance Testing and Acceptance, as may be further described in a Purchasing Instrument(s). Upon completion of all work to be performed by Vendor with respect to any Deliverable or group of Deliverables, Vendor shall deliver a written notice to the Agency certifying that the foregoing meets and conforms to applicable Acceptance Criteria and is ready for the Agency to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable(s), to determine that it meets and operates in accordance with applicable Acceptance Criteria prior to delivering such notice to the Agency. At the Agency's request, Vendor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency. Within the respective time period set forth in the Purchase Instrument (the "Acceptance Timeframe"), as the same may be amended by mutual agreement between the parties, the Agency shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable, or any portion thereof, evaluated during such Acceptance Testing. If the Agency determines that a Deliverable(s), in whole or in part, satisfies its Acceptance Tests, the Agency shall provide Vendor with notice of Acceptance with respect to such Deliverable(s). If the Agency determines that a Deliverable(s), in whole or in part, fails to satisfy its Acceptance Tests, the Agency shall provide Vendor with notice of Non-Acceptance with respect to such Deliverable(s). Absent written notification of Non-acceptance from the Agency within the Acceptance Timeframe, Deliverables will be construed as accepted. In the event the Agency provides notice of Non-Acceptance to Vendor with respect to any Deliverable(s), Vendor shall correct and repair such Deliverable(s) and submit it to the Agency within 10 days of Vendor's receipt of notice of Non-acceptance so the Agency may re-conduct its Acceptance Tests with respect to such Deliverable(s). In the event the Agency determines after re-conducting its Acceptance Tests such Deliverable(s) continue to fail to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to:

4.1.1. Require Vendor to correct and repair such Deliverable(s) within such period of time as the Agency may specify in a written notice to Vendor;

4.1.2. Refuse to accept such Deliverable(s) without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such Deliverable(s), or receive a refund of any fees or amounts already paid with respect to such Deliverable(s);

4.1.3. Accept such Deliverable(s) on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Agency's satisfaction, the Deficiencies or Errors present therein and any reduced value or functionality of such Deliverable(s), or the costs likely to be incurred by the Agency to correct such Deficiencies or Errors; or

4.1.4. Terminate the applicable Purchasing Instrument or seek any and all available remedies, including damages. Notwithstanding any other provisions of this Agreement related to termination, the Agency may terminate a Purchasing Instrument in its entirety pursuant to this Section without providing Vendor any notice or opportunity to cure.

The Agency's right to exercise the foregoing rights and remedies, including termination of the applicable Purchasing Instrument, shall remain in effect until Acceptance Tests are successfully completed to the Agency's satisfaction and the Agency has provided Vendor with written notice of Final Acceptance. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s), shall not be construed as a waiver of any of the Agency's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any Deficiency or Error is later discovered with respect to such Deliverable(s). In addition, Vendor's receipt of any notice of Acceptance with respect to any Deliverable(s) shall not be construed as a waiver by the Agency of its right to refuse to provide notice of Final Acceptance.

4.2. Project Management and Reporting.

4.2.1. *Vendor or Project Manager.* Vendor shall designate, in writing, a Project Manager acceptable to the Agency. Vendor will assign a Project Manager of a management level sufficient to ensure timely responses from all Vendor Personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the Agency prior to his or her appointment as Vendor's Project Manager. Vendor represents and warrants that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her or him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise commercially reasonable efforts while performing under this Agreement. Vendor's Project Manager shall be at the Agency's site as needed during the course of work and will be available either in person, by telephone, or by email to respond promptly during the business day to inquiries from the Agency.

4.2.2. *Review Meetings.* Vendor's Project Manager shall meet weekly with the Agency's project manager and representatives, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor or performance issues. At each review meeting, Vendor's Project Manager shall provide a status report, which shall include, at minimum, the information described in Section 4.2.3 (*Reports*) and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, Vendor 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. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance of this Agreement.

4.2.3. *Reports.* Vendor shall provide the Agency with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Services or Deliverables, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Agency may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Agency's approval.

4.2.4. *Problem Reporting Omissions.* The Agency's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity the Agency may have. The Agency's failure to identify the extent of a problem, Deficiency, or Error, or the extent of damages incurred as a result of a problem, Deficiency, or Error, shall not act as a waiver of performance or constitute Acceptance under this Agreement.

5. Ownership and Intellectual Property.

5.1. Ownership of Vendor-Owned Deliverables. Notwithstanding any other term included in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Vendor shall own all Deliverables that were independently and exclusively developed by Vendor prior to the Effective Date of this Agreement and, to the extent such Deliverables contain information that is of general application, anything that Vendor may discover, create or develop during the provision of services under this Agreement ("Vendor-Owned Deliverables"). Further, except where a more specific grant of license is set forth in a Purchasing Instrument or as otherwise provided in this Agreement, with respect to all Deliverables that contain Vendor-Owned Deliverables, the Agency is granted a non-exclusive, non-assignable, royalty-free license to use it in connection with the subject of this Agreement.

5.2. Ownership and Assignment of Customer-Owned Deliverables. Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably assigns, transfers, and conveys to the Agency all right, title and interest in and to Customer-Owned Deliverables. Vendor represents and warrants that the Agency shall acquire good and clear title to all Customer-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including Vendor Contractors and Vendor Personnel. Vendor, Vendor Contractors, and Vendor Personnel shall not retain any property interests or other rights in or to Customer-Owned Deliverables and shall not use any Customer-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency commissioning such Deliverables and the payment of such royalties or other compensation as the Agency deems appropriate. Immediately upon the request of the Agency, Vendor will deliver to the Agency or destroy, or both, at the Agency's option, all copies of any Customer-Owned Deliverables in the possession of Vendor.

5.3. Waiver. To the extent any of Vendor's, Vendor Contractor's, or any Vendor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights or any rights of attribution or integrity, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the Agency's rights in and to Customer-Owned Deliverables.

5.4. Acknowledgement. Vendor acknowledges and agrees that the Agency, as owner and assignee of Customer-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation:

5.4.1. Obtain, secure, file, and apply for any legal protection necessary to secure or protect any rights in and to Customer-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto;

5.4.2. Adapt, change, modify, edit, or otherwise use non-Vendor branded Customer-Owned Deliverables as the Agency sees fit, including in combination with the works of others, prepare derivative works based on non-Vendor branded Customer-Owned Deliverables, and publish, display, perform, host, and distribute throughout the world any non-Vendor branded Customer-Owned Deliverable(s) in any medium, whether now known or later devised, including any digital or optical medium; and

5.5. Make, use, sell, license, sublicense, lease, or distribute non-Vendor branded Customer-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party, including Vendor Contractors or Vendor Personnel.

5.6. Further Assurances. At the State of Iowa's or Agency's request, Vendor will both during and after the termination or expiration of this Agreement, execute and deliver such instruments, provide all facts known to it, and take such other action as may be requested by the State of Iowa or Agency to:

5.6.1. Establish, perfect, or protect the Agency's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers, and conveyances set forth in Section 5.2 (*Ownership and Assignment of Customer-Owned Deliverables*); and

5.6.2. Obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof.

5.7. Third Party Intellectual Property. Except as otherwise agreed to by the Parties in writing, in the event a Deliverable(s) is comprised of Third Party Intellectual Property, Vendor shall ensure such Deliverables is licensed to the Agency pursuant to a license agreement, the terms and conditions of which are acceptable to the Agency.

5.8. Rights of the Federal and State Government. If all or a portion of the funding used to pay for Customer-Owned Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights, including 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 Customer-Owned Deliverables developed under this Agreement and the copyright in and to such Customer-Owned Deliverables.

5.9. Customer Property. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement and in compliance with Agency's security and confidentiality requirements. Customer Property shall at all times remain the property of the Agency or applicable Third Party owning Customer Property that has been licensed to the Agency. Vendor, Vendor Contractors, Vendor Personnel and the Deliverables shall comply with any and all the license terms, conditions, or restrictions applicable to any Customer Property that has been licensed to the Agency or otherwise made available or accessible to the Agency or Vendor by a Third Party, including to the extent the Deliverables must interface, integrate, or connect to such Customer Property.

5.10. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

6. Representations, Warranties, and Covenants.

6.1. Deliverables Free of Deficiencies. Vendor represents and warrants that the Deliverables, in whole and in part, shall: (i) be free from material Deficiencies and Errors; and (ii) meet, conform to and operate in accordance with all Acceptance Criteria and in accordance with this Agreement.

6.2. Quiet Enjoyment. Vendor represents and warrants that: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide Deliverables to the Agency hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed the Agency hereunder without violating any rights of any Third Party; (ii) it has not previously and will not grant any rights in any Deliverables to any Third Party that are inconsistent with the rights granted to the Agency herein; and (iii) the Agency shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption, or interruption.

6.3. Intellectual Property. Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) the Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto) in accordance with this Agreement, do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress, or other intellectual property right, proprietary right, or personal right of any Third Party. Vendor further represents and warrants, upon knowledge and belief, 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 any Deliverables. Vendor shall inform the Agency in writing promptly upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, Vendor shall, at the Agency's request and at Vendor's sole expense: (i) procure for the Agency the right or license to continue to use the Deliverable(s) at issue, or relevant aspect thereof; (ii) replace the infringing, violating, or misappropriated aspects of such Deliverable(s) with a functionally equivalent replacement; (iii) modify or replace the affected portion of the Deliverable(s) with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable(s) at issue and refund to the Agency all fees, charges, and any other amounts paid by the Agency under this Agreement or any related agreement with respect to such Deliverable(s). In addition, Vendor agrees to indemnify and hold harmless the Agency and its officers, directors, employees, officials, and agents as provided in the Indemnification section of this Agreement, including for any breach of the representations and warranties made by Vendor in this Section 6.3 (*Intellectual Property*). The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency under this Agreement or otherwise and shall survive termination of this Agreement.

6.4. Workmanlike Manner. Vendor represents, warrants, and covenants that all Services to be performed under this Agreement shall be performed in a professional, competent, diligent, and workmanlike manner by knowledgeable, trained, and qualified personnel, all in accordance with the terms and conditions of this Agreement 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 Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Vendor of any Services performed in violation of this standard, Vendor shall re-perform the Services at no cost to the Agency, such that the Services are rendered in the above-specified manner, or if Vendor is unable to perform the Services as warranted, Vendor shall reimburse the Agency any fees or compensation paid to Vendor for the unsatisfactory Services.

6.5. Compliance with Law. Vendor represents, warrants, covenants, and promises that Vendor, Vendor Contractors, and Vendor Personnel have complied with, and shall continue to comply, and, to the extent applicable, the Deliverables comply with all applicable federal, state, foreign, and local laws, rules, regulations, codes, standards, ordinances, and orders both generally and in connection with the performance of this Agreement, including the following:

6.5.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and corresponding rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the Agency's written request, Vendor shall submit to the Agency a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code Chapter 11—121.

6.5.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.

6.5.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.

6.5.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.

6.5.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.1, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.

6.5.6. All applicable I.T. Governance Document(s).

6.5.7. To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the federal government, any terms or conditions required to be included in a contract between the Agency and a contractor pursuant to applicable federal laws, regulations, circulars, and bulletins, which terms and conditions are incorporated by reference into this Agreement as if fully set forth herein and contractual obligations of Vendor.

6.5.8. IRS Pub 1075.

6.5.9. Iowa Code sections 422.20 and 422.72.

Vendor shall take such steps as necessary to ensure Vendor Contractors and Vendor Personnel are bound by the terms and conditions contained in this Section 6.5 (*Compliance with Law*). Notwithstanding anything in this Agreement to the contrary, Vendor, Vendor Contractors, and Vendor Personnel's failure to fulfill any requirement set forth in this Section 6.5 (*Compliance with Law*) shall be regarded as a material breach of this Agreement the Agency may cancel, terminate, or suspend, in whole or in part, this Agreement or any Purchasing Instruments executed hereunder. In addition, the Agency may declare Vendor or Vendor Contractors ineligible for future Agency contracts in accordance with authorized procedures or Vendor or Vendor Contractors may be subject to other sanctions as provided by law or rule.

6.6. No Conflicts. Vendor represents, warrants, and covenants, upon knowledge and belief, that no relationship existed at the time of the formation of this Agreement, or will exist during the Term of the Agreement, between Vendor, Vendor Contractors, or Vendor Personnel and the Agency or the State of Iowa or any of its employees or Authorized Contractors that is or may constitute a conflict of interest or appearance of impropriety, or that would conflict in any manner or degree with the performance of its obligations under this Agreement. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement and any Purchasing Instruments executed hereunder, and Vendor, Vendor Contractors, and Vendor Personnel shall not engage in or permit any Third Party to engage in any conduct that would violate that chapter.

6.7. Up to Date on Payments. Vendor represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the State of Iowa, including the payment of taxes and employee benefits, and covenants and warrants it will not become so during the Term, or any extensions thereof.

6.8. Documentation. Vendor represents, warrants, and covenants that during the Term, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains, and the Documentation will enable the Agency to use such Deliverable(s) for the purposes set forth in this Agreement or the applicable Purchasing Document.

6.9. Disclaimer of Implied Warranties. EACH PARTY DISCLAIMS ALL OTHER WARRANTIES EXPRESS, IMPLIED OR STATUTORY, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.10. Cumulative Warranties. Except to the extent otherwise provided herein, Vendor's warranties provided in this Section 6 (*Representations, Warranties, and Covenants*) are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Agency.

6.11. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 6 (*Representations, Warranties, and Covenants*) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

7. Indemnification.

7.1. Indemnification Generally. Vendor shall indemnify DOM and the State of Iowa and their employees, officers, or representatives ("Indemnitees") from and against any third party claims, legal actions, judgments, penalties, recoupments, or other costs, including reasonable and documented costs of counsel ("Claims"), to the extent arising directly out of Vendor's negligence or willful omissions in the performance or attempted performance under this Agreement, for

7.1.1. death or bodily injury;

7.1.2. damage to real or tangible property;

7.1.3. patent, copyright, or trademarking infringement; and

7.1.4. breach of the confidentiality and/or security obligations set forth in this Agreement, including a Security Breach, as defined herein.

7.2. Infringement Claim Additional Remedy. If the Deliverables become or are likely to become the subject of a Claim, then, in addition to paying any damages and reasonable and documented attorney fees as required above, Vendor shall, at its option, either:

7.2.1. Immediately replace or modify the Deliverables, without loss of material functionality or performance, to make them non-infringing, or

7.2.2. Immediately procure for the Agency the right to continue using the Deliverables.

Any costs associated with implementing either of the above alternatives will be borne by Vendor. If Vendor fails to provide one of the foregoing remedies within 45 days of notice of the Claim, in addition to any other remedies available to the Agency under this Agreement, at law, or in equity, the Agency shall have the right, at its sole option, to terminate this Agreement or any applicable Purchasing Instrument, in whole or in part, and have Vendor refund to the Agency all associated fees, compensation or other amounts paid by the Agency.

7.3. Vendor's duties, obligations, and liabilities as set forth in this Section 7 shall survive termination of this Agreement.

8. Limitation of Liability.

8.1. Notwithstanding the terms of any other provision herein, or the terms of any Purchasing Document, to the extent permitted under Iowa Administrative Code Chapter 11-120, the

Vendor's aggregate liability for all claims, losses, liabilities or damages in connection with this Agreement or its subject matter, whether as a result of breach of contract, tort (including negligence) or otherwise, regardless of the theory of liability asserted, is limited to no more than one (1) times the contract value, as defined in subrule 120.5(3); *provided* that the foregoing limitation shall not apply to:

8.1.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;

8.1.2. Claims related to death, bodily injury, or damage to real or personal property;

8.1.3. any contractual obligations of the vendor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, or confidential information; and

8.1.4. Claims arising under provisions of the contract calling for indemnification of the state for third-party claims against the state for bodily injury to persons or for damage to real or tangible personal property caused by the vendor's negligence or willful conduct.

8.2. Neither Vendor nor Agency will be liable in any event for lost profits, consequential, incidental, indirect, punitive, exemplary or special damages, even if Agency or Vendor had been advised of the possibility of such damages, provided Vendor's liability for such damages foes not arise our of the items identified in Sections 9.1.1, 8.1.2, 8.1.3, or 8.1.4.

9. Termination.

9.1. Termination for Cause by the Agency. The Agency may terminate this Agreement or any Purchasing Instrument(s) entered into under this Agreement upon written notice of Vendor's breach of any material term of the Agreement or associated Purchasing Instrument if the breach is not cured within a reasonable time period specified in the Agency's notice of breach. In addition, the Agency may terminate this Agreement or an associated Purchasing Instrument without advance notice if:

9.1.1. Vendor makes false statements in connection with the Agreement,

9.1.2. Vendor, its staff, or its subcontractors have engaged in criminal conduct including fraud, misappropriation, embezzlement, or malfeasance,

9.1.3. Vendor takes any steps, as reasonably determined in the Agency's discretion, towards dissolution or suspension of business,

9.1.4. Vendor's authority to do business in the State of Iowa is lost,

9.1.5. Vendor has failed to comply with applicable laws when performing pursuant to the Agreement or Purchasing Instrument,

9.1.6. Vendor's ability to perform is materially impacted by third-party claims of intellectual property violations by Vendor, or

9.1.7. Vendor's actions are reasonable determined to expose the Agency to material liability.

Vendor shall notify the Agency of any events that could give rise to the Agency's right to terminate for cause.

9.2. Termination for Cause by Vendor. Vendor may only terminate an applicable Purchasing Instrument or this Agreement upon written notice of the Agency's breach of any material term of this Agreement if the breach is not cured within 60 days of the Agency's receipt of Vendor's written notice.

9.3. Termination for Convenience. Following 30 days' written notice, the Agency or applicable Governmental Entity may terminate a Purchasing Instrument in whole or in part without cause. The Agency may terminate this Agreement in whole or in part upon 30 days' written notice without cause.

9.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, the Agency may terminate this Agreement or a Purchasing Instrument, in whole or in part, without penalty or liability and without any advance notice if:

9.4.1. the Agency determines that it has not been appropriated sufficient funds or funds have been reduced, unallocated, or delayed such that the Agency cannot, in the Agency's sole discretion, meet its obligations,

9.4.2. the Agency's authority has been withdrawn or materially altered, or its duties, programs or responsibilities are modified or materially altered, or

9.4.3. there is a judicial decision that materially or adversely affects the Agency's ability to fulfill obligations under this Agreement or any applicable Purchasing Instrument.

9.5. Limitation of Payment Obligations. If the Agency terminates this Agreement or a Purchasing Instrument for cause, the Agency retains the right to contest amounts that remain unpaid as of the date of termination. In all other termination contexts, the Agency will pay those amounts due for goods or services accepted by the Agency for which the Agency is obligated to pay up to the date of termination to the extent that funds to make these payments are legally available. Payment is contingent on submission and acceptance of invoices for sums due. Under no circumstances will the Agency be liable for sums not expressly owed under the terms of the Agreement or a Purchasing Instrument.

9.6. Vendor's Termination or Expiration Duties. As it relates to this Agreement or any associated Purchasing Instrument, upon receipt of a notice of termination, upon expiration, or upon request of the Agency, Vendor must:

9.6.1. cease work under the Agreement or Purchasing Instrument and take all appropriate actions to limit disbursements and minimize costs;

9.6.2. provide a report to the Agency addressing the Agency's information needs, including the status of all work performed under the Agreement;

9.6.3. cease using and return any Customer Property or Customer-Owned Deliverables;

9.6.4. comply with the Agency's directions concerning Customer Data;

9.6.5. return or refund any Agency payments for goods or services not provided to the Agency; and

9.6.6. provide all Deliverables to the extent the Agency has a property interest in the Deliverable.

9.6.7. Continue to perform and provide such goods and/or Services under this Agreement as the Agency may request for a transition period of up to 365 days from the effective date of such termination or expiration and collaborate with the Agency and any replacement contractor. As part of such request, the Agency will inform Vendor of the number of days needed for transition ("Transition Period"). During the Transition Period, the Agency agrees to pay Vendor any fees to which Vendor would be entitled under this Agreement for goods and/or Services performed or provided during such period. In the event the Agency's request for transition assistance does not require Vendor to continue providing all of the goods and/or Services under this Agreement or applicable Purchasing Instrument, the Parties will negotiate in good faith a downward adjustment in the fees owed the Vendor.

9.7. Survival. Expiration or termination of this Agreement or a Purchasing Instrument for any reason will not release either Party from any duties, liabilities, or obligations set forth in this Agreement which:

9.7.1. The Parties have expressly agreed in writing survive any such expiration or termination, including as set forth in the following Sections:

9.7.1.1. 3 (*Compensation and Additional Rights and Remedies*);

9.7.1.2. 5 (*Ownership and Intellectual Property*);

9.7.1.3. 6 (*Representations, Warranties, and Covenants*);

9.7.1.4. 7 (*Indemnification*);

9.7.1.5. 8 (*Limitation of Liability*);

9.7.1.6. 9 (*Term and Termination*);

9.7.1.7. 10 (*Confidentiality*);

9.7.1.8. 11 (*Security/Privacy, Business Continuity, and Disaster Recovery*); and

9.7.1.9. 12 (*General Provisions*).

9.7.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

10. Confidentiality.

10.1. Vendor's Treatment of Confidential Information.

10.1.1. *Limited Access.* The Agency owns and has exclusive rights to all Customer Data. Vendor must treat all Customer Data as Confidential Information, keep it secure, and not disclose or use it for any purpose other than providing goods or services under the Agreement. All uses for commercial or political purposes are strictly forbidden. Vendor must comply with any restrictions on use or disclosure outlined in the Agreement or applicable law. Vendor may only remove Customer Data from Agency facilities or retain a copy if it is necessary to provide the goods or services under the Agreement. Removal or retention of data by Vendor requires prior written Agency approval. Unauthorized uses or disclosures of Customer Data shall be promptly reported to the Agency.

10.1.2. *Destruction or Return of Customer Data.* Upon completion of duties under this Contract or upon the specific direction of the Agency, the Vendor shall certify the destruction of all Customer Data. If immediate destruction is not possible, the Vendor shall certify that any Customer Data remaining shall be safeguarded to prevent unauthorized disclosures until it has been purged. Once all Customer Data has been completely purged, Vendor shall provide certification of destruction in accordance with National Institute of Standards and Technology ("NIST")-approved methods.

10.1.3. *Compelled Disclosures.* In the event that a subpoena or other legal process is served upon Vendor for Customer Data, Vendor shall, to the extent permitted by law, promptly notify the Agency and cooperate with the Agency in any lawful effort to protect the Customer Data.

10.2. Treatment of Vendor's Confidential Information.

10.2.1. *Safeguarding Obligation.* Except as provided or contemplated herein, and subject to applicable state, federal, or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), the Agency shall not intentionally disclose Vendor's Confidential Information to a Third Party (excluding the Agency's Authorized Contractors) without the prior written consent of Vendor.

10.2.2. *Destruction or Return of Vendor's Confidential Information.* Upon termination or expiration of this Agreement or an applicable Purchasing Instrument, the Agency shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items subject to any continuing licenses inuring to the benefit of the Agency hereunder or that are required for use of any Customer-Owned Deliverables or other Deliverables to which the Agency has a continued right to use).

10.2.3. *Compelled Disclosures.* Notwithstanding and in addition to the foregoing, the Agency may disclose Vendor's Confidential Information:

10.2.3.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative, or regulatory processes;

10.2.3.2. Pursuant to any applicable laws, rules, or regulations;

10.2.3.3. If the Agency reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; provided, Agency gives Vendor a reasonable opportunity to oppose any such determination; or

10.2.3.4. If the Agency, in the Agency's sole discretion, determines Vendor has not provided or is unwilling to provide facts sufficient to enable the Agency to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any of Vendor's Confidential Information as permitted above, the Agency shall provide reasonable notice to Vendor of the circumstances giving rise to such disclosure.

10.3. Open Records and Electronic Discovery Requests and Records Retention. Vendor will, upon the Agency's request and within any time period specified by the Agency, take all actions reasonably requested by the Agency to assist it in complying timely with any request for Customer Data or other data or information that may be made by any Third Party in accordance with applicable public or open records laws (including Iowa Code Chapter 22) or in connection with any subpoena, court order, discovery request, regulatory or criminal investigation or proceeding, or any other matter that may require the Agency to produce or provide Customer Data or other data or information to a Third Party. Vendor will produce and provide all Customer Data or other data or information within the time period reasonably set forth in the Agency's request. Vendor will take all steps reasonably necessary to ensure Customer Data is stored and maintained in its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon the Agency's request, take all actions reasonably requested by the Agency to assist it in complying with any federal, state, or local record retention requirements, policies, procedures, or other similar requirements.

10.4. Non-Exclusive Equitable Remedy. Each Party acknowledges and agrees that due to the unique nature of Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or Third Parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party will be entitled to seek appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section 10 (*Confidentiality*) will constitute a material breach of this Agreement and be grounds for immediate termination of any applicable Purchasing Instrument, or in the Agency's case the Agreement, in the exclusive discretion of the non-breaching Party.

10.5. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 10 (*Confidentiality*) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

11. Security/Privacy, Business Continuity, and Disaster Recovery.

11.1. Data Protection. Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data, Customer Property, and any related Deliverables. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:

11.1.1. Implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, theft, or modification of or to Customer Data, Customer Property or any related Deliverables. Such security measures shall be in accordance with recognized industry standards and controls (including NIST SP 800-171 Revision 2 and ISO27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard their own Confidential Information of like importance. In addition, such security measures, to the extent applicable, shall comply with, and shall enable the Agency to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, policies, or procedures ordinances, codes, regulations, and orders related to such security measures or other security, privacy, or safeguarding requirements, including applicable I.T. Governance Document(s).

11.1.2. All Customer Data shall be encrypted at rest and in transit with controlled access and any related Deliverables shall use TLS 1.2 or higher. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor, Vendor Contractors, and Vendor Personnel are responsible for encryption of Customer Data in their possession. Additionally, Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-3, Security Requirements for Cryptographic Modules for all Customer Data, unless the Agency approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.

11.1.3. Storage, Processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America. Vendor shall not allow Vendor Personnel to store, Process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.

11.1.4. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support. Vendor utilizes a Follow-the-Sun model when providing technical user support on a 24/7 basis.

11.2. <u>Customer Data and Audits</u>

11.2.1. *Retention of Customer Data.* Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor shall not take any action to intentionally erase any Customer Data until otherwise directed by the Agency in accordance with Section 10.1.2 (*Destruction or Return of Customer Data*).

11.2.2. Compliance/Audits.

11.2.2.1. *Compliance.* Annually throughout the term, Vendor shall obtain and provide the Agency upon request, at its own cost, an independent, Third Party certificate of attestation certifying that the Deliverables comply with NIST 800-53 and IRS Publication 1075. This includes Federal Risk and Authorization Management Program (FedRAMP) certification for a Delivarable hosted in a cloud environment.

11.2.2.2. In addition to the requirements in Section 11.2.3.1, Vendor may also, at its own cost, provide any of the following:

11.2.2.2.1. An independent, Third Party certificate of audit certifying that the Deliverables comply with NIST 800-53, Revision 4 controls;

11.2.2.2.2. An ISO/IEC 27001 and 20000 certification;

11.2.2.2.3. Test or assessment results of an independent, Third Party assessment of application scans using the Open Web Application Security Project (OWASP) Top Ten List;

11.2.2.2.4. Evidence of Vendor's annual SOC 2 type 2 report (for all Trust Services Principles); and

11.2.2.2.5. A Vendor-produced remediation plan resulting from items 11.2.3.1.1 through 11.2.3.1.5, inclusive.

11.2.2.2.6. Statement on Standards for Attestation Engagement (SSAE) 18 of Vendor's operations, information security program, and disaster recovery/business continuity plan

11.2.2.3. *Security Audit.* During the Term, the Agency or its Authorized Contractor(s) may perform with thirty (30) days advanced written notice security audits of Vendor's environment. The Agency's regulators (including any federal agencies providing funds used to pay for the Deliverables, in whole or in part, or which regulate the security or safeguarding of any Customer Data stored, Processed, or housed in the Deliverables) shall have the same right upon request. Vendor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

11.2.2.4. *Access to Security Logs and Reports.* Vendor shall provide applicable security logs and reports to the Agency or its Authorized Contractors in a mutually agreeable format upon request. Such reports shall include, at minimum, latency statistics, user access summaries, user access IP address summaries, and user access history and security logs for all the Deliverables.

11.3. Personnel Safeguards.

11.3.1. *Background Checks.*

11.3.1.1. *Floor.* Vendor shall conduct background checks in compliance with IRS Publication 1075 on all Vendor Personnel. Vendor shall provide the Agency with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.

11.3.1.1.1. If the criminal history check reveals a conviction, Vendor shall work with Agency to review the conviction and any additional information provided by the applicant. The existence of a conviction does not automatically disqualify an applicant or employee from performance on this performance or provision of Services or Deliverables under this Agreement.

Decisions regarding assignment to this Agreement will be determined on a case-by-case basis and consideration will include but not be limited to:

11.3.1.1.1.1. The nature of the conviction.

11.3.1.1.1.2. The length of time between the offense and the employment decision.

11.3.1.1.1.3. Number of offenses.

11.3.1.1.1.4. Relatedness of the conviction to the duties and responsibilities of the position.

11.3.1.1.1.5. Efforts at rehabilitation.

11.3.1.1.1.6. Accuracy of the information that the applicant provided on the employment application.

11.3.1.2. Absent exigent circumstances, applicants and employees who have been convicted of crimes involving crimes of dishonesty, financial crimes, and crimes involving the misuse of confidential information shall be disqualified from designation as Vendor Personnel.

11.3.1.3. Deferred judgments shall be considered in all background investigations.

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

11.3.1.5. Vendor shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor or the Agency or its Authorized Contractors.

11.3.2. *Right to Remove Individuals.* Should the Agency be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel, the Agency may request the replacement of such Vendor Personnel ("Replacement Request"). The

Replacement Request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within thirty (30) business days. If the Agency, in its sole discretion, determines Vendor Personnel pose a potential security risk and notifies Vendor of such security risk in its Replacement Request, Vendor shall immediately remove such individual; any replacement furnished by Vendor in connection with such a request may not perform or provide Services or Deliverables to the Agency unless and until the Agency gives its consent to Vendor's use of such replacement.

11.3.3. *Security Awareness Training.* Vendor shall promote and maintain an awareness of the importance of securing, safeguarding, and otherwise appropriately handling Customer Property, including Customer Data, among Vendor Personnel, including but not limited to, Agency's annual security training.

11.3.4. *Separation of Job Duties.* Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Contractors and Vendor Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Property and Customer Data to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Services and Deliverables hereunder.

11.3.5. *Non-disclosure/Confidentiality Agreements.* Vendor Personnel are required to sign the Agency's standard confidentiality or non-disclosure agreement(s), or other confidentiality or non-disclosure agreement(s), including as may be required by applicable law, rule, regulation, or policy.

11.4. Security Breaches.

11.4.1. *Reporting.* Vendor or Vendor Contractors will report to the Agency within twenty-four (24) hours of Vendor's discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to the Agency within forty-eight (48) hours of discovery or notification of the actual or suspected Security Breach. Such written confirmation shall include an explanation of the nature of and circumstances surrounding such actual or suspected Security Breach.

11.4.2. *Investigations in Response to Actual or Suspected Breach.* Vendor and Vendor Contractors agree, at their sole expense, to take all steps reasonably necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the Agency in resolving and mitigating any damage from such actual or suspected Security Breach at Vendor's sole cost. At no additional cost to the Agency or the State of Iowa, Vendor and Vendor Contractor will fully cooperate with the Agency and its Authorized Contractors in investigating such actual or suspected Security Breach, including reviewing and assisting in reviewing system, application, and access logs, conducting and assisting in conducting forensic audits of relevant systems, imaging and assisting in imaging relevant media, and making personnel available for interview. On notice of any actual or suspected Security Breach, Vendor and Vendor Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. Vendor and Vendor Contractor will deliver to the Agency a root cause assessment and future incident mitigation plan and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. Vendor agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless the Agency specifically requests Vendor do so in writing.

11.4.3. *Additional Remedies in the Event of Actual Breach.* Upon the Agency's determination that a Security Breach involving or relating to Customer Data has occurred, Vendor and Vendor Contractors shall fully cooperate with the Agency in fully rectifying and responding to such Security Breach. Notwithstanding any provision in this Agreement or any other related agreement to the contrary, Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (including the reasonable value of time of the Iowa Attorney General's Office or the costs, expenses and attorney fees of other counsel retained by the State of Iowa or the Agency) directly arising out of any Security Breach caused by any act, error or omission, negligence, or misconduct of Vendor, Vendor Contractors, or Vendor Personnel, including the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); opening and closing accounts, printing new checks, embossing new cards; forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all other reasonable costs associated with corrective or other actions that are taken to mitigate or address the Security Breach. The Agency shall reasonably determine, in its sole discretion, the content and means of delivery of any such notifications or reports. Vendor will reimburse or pay to the Agency all such expenses, fees, damages, and all other amounts within thirty (30) business days of the date of any written demand or request delivered to Vendor.

11.4.4. Notwithstanding other requirements in this Agreement, if there is a breach of any "personal information" as that term is defined and governed by Iowa Code chapter 715C, that has been provided to Vendor or Vendor Contractor pursuant to this Agreement, Vendor understands and agrees that Vendor, not the Agency, shall be responsible for complying with any applicable provisions of Iowa Code chapter 715C, including but not limited to any applicable consumer notification requirements.

11.5. <u>Disaster Recovery and Business Continuity</u>.

11.5.1. *Creation, Maintenance, and Testing.* Vendor shall maintain a Business Continuity and Disaster Recovery Plan for the Deliverables ("Plan"), and implement such plan in the event of any unplanned interruption. Upon the Agency's request, Vendor shall provide the Agency with a copy of Vendor's current Plan, revision history, and any reports or summaries relating to past testing of the Plan. Vendor shall actively test, review, and update the Plan on at least an annual basis using American Institute of Certified Public

Accountants standards and other industry best practices as guidance. Vendor shall promptly provide the Agency with copies of all reports and summaries resulting from any testing of the Plan and with copies of any updates to the Plan. All updates shall be subject to the requirements of this Section 11.5 (*Disaster Recovery/Business Continuity*). Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard the Customer Data and the data processing capability and availability of the Deliverables. Additional disaster recovery and business continuity requirements may be set forth in individual Purchasing Instruments.

11.5.2. *Activation of Plan*. Vendor shall immediately notify the Agency of any disaster or other event that results in the activation of the Plan. If Vendor fails to reinstate the Deliverables impacted by any such disaster within the periods of time set forth in the Plan, the Agency may, in addition to any other remedies available hereunder, immediately terminate this Agreement or applicable Purchasing Instrument as a non-curable default and without any penalty or liability. Without limiting Vendor's obligations under this Agreement, whenever a disaster causes Vendor to allocate limited resources between or among Vendor's customers, the Agency shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 12.23 (*Force Majeure*) shall not limit Vendor's obligations under this Section 11 (*Security/Privacy, Business Continuity, and Disaster Recovery*). Further, nothing in this shall be construed as in any way limiting Vendor's obligations elsewhere in this Agreement, including any applicable services levels and related remedies set forth in any Service-Level Agreement attached hereto as Special Terms and Conditions.

11.5.3. *Backup and Recovery*. Except as otherwise set forth in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and Conditions, Vendor is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within two (2) hours at any point in time. Additionally, unless otherwise provided in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and Conditions, Vendor shall store a backup of Customer Data in an off-site "hardened" facility no less than daily, maintaining the security of Customer Data, consistent with the security requirements set forth in this Section 11 (*Security/Privacy, Business Continuity, and Disaster Recovery*). To the extent applicable in calculating the fees to be charged to the Agency under this Agreement, any backups of Customer Data shall not be considered in calculating storage used by the Agency.

11.5.4. *Loss of Data*. In the event of any Security Breach or any other event that compromises the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Vendor or Vendor Contractors related to the protection of the security, confidentiality, or integrity of Customer Data, Vendor shall, in addition to any other remedies available pursuant to this Agreement, or otherwise available at law or in equity, to the extent applicable: (a) notify the Agency as soon as practicable but no later than two (2) hours of becoming aware of such occurrence; (b) send the Agency written confirmation within forty-eight (48) hours of discovery or notification of the occurrence; (c) cooperate with Agency in investigating the occurrence, including, but not limited to providing to the Agency and assisting the Agency in reviewing system, application, and access logs, conducting forensic audits of relevant systems, imaging relevant media, and making personnel available for interview; (d) indemnify and hold harmless the Agency and its employees, officers, board members, agents, representatives, and officials from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and expenses (including the reasonable value of time of the Iowa Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of such occurrence; (e) be responsible for recreating lost Customer Data in the manner and on the schedule specified by the Agency without charge; and, (g) provide to the Agency a detailed plan within ten (10) calendar days of the occurrence describing the measures Vendor will undertake to prevent a future occurrence.

11.6. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 11 (*Security/Privacy, Business Continuity, and Disaster Recovery*) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

12. General Provisions.

12.1. Immigration Status. Vendor is responsible for ensuring compliance with all Visa requirements. The Agency requires Vendor to conduct E-Verify employment-eligibility verifications of Vendor Personnel working under this Agreement at Vendor's cost. Vendor shall provide the Agency with the E-Verify results as directed by the Agency

12.2. No Publicity. Vendor is prohibited, both during the term of the Agreement and after the Agreement's termination or expiration, from publicizing this contractual arrangement relationship or in any way using the Agency's name, logo, or other identifying information without the Agency's prior written consent.

12.3. Independent Contractor. Vendor is an independent contractor performing services for the Agency and shall not be considered an employee, partner, or agent of the Agency. Vendor Personnel are not employees of the State of Iowa simply by virtue of work performed under this Agreement. Vendor is responsible for all taxes, licenses, insurance, and other obligations arising from their status as an independent contractor.

12.4. Amendments. This Agreement may be amended from time to time by mutual written consent of the Parties. The Parties expressly agree that no amendments or modifications to this Agreement shall be effected through transactional documents. Notwithstanding the above, specific Purchasing Instruments may modify the terms of the Agreement as necessary to effect the Parties' intent with respect to such Purchasing Instrument. However, any such modifications shall be limited to the scope of the Purchasing Instrument.

12.5. No Third Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement.

12.6. Choice of Law and Forum. This Agreement shall be governed by the laws of the State of Iowa, without giving effect to the choice of law principles of Iowa law. Any litigation in connection with this Agreement, shall be brought and maintained in the state or federal courts sitting in Polk County, Iowa. Vendor submits to the jurisdiction of the aforesaid courts and waives any jurisdictional objection based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability available to the Agency. Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's Registered Agent as listed in the CD&E.

12.7. Assignment and Delegation. This Agreement may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that the Agency may assign, transfer, or convey this Agreement, in whole or in part, to any Governmental Entity that succeeds its duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency.

12.8. Use of Third Parties. None of the Services or Deliverables to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party, including Vendor Contractors, without the prior written consent of the Agency. Such consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Agency, whether financial or otherwise. Any subcontract to which the Agency has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Agency may deem necessary.

12.9. Integration. This Agreement supersedes former agreements for the goods and/or services addressed in the Agreement, and represents the entire agreement between the Parties. Neither Party is relying on any representation that may have been made which is not included in this Agreement. The Agreement may only be changed through an Amendment signed by both parties. Terms associated with transactional documents (e.g., invoices) as well as terms such as "shrink wrap" or "click wrap" agreements will have no force and effect unless reduced to a formal Amendment signed by both parties.

12.10. Waiver. The parties may agree in writing to waive some aspect of contract performance, but such waivers must be in writing and mutually signed. Failure by one Party to require performance under the Contract by the other Party does not affect the right to enforce the Contract's terms or claim breach concerning subsequent Contract compliance issues.

12.11. Notices. Any legal notices required by the Contract shall be given in writing by registered or certified mail with proof of receipt, or overnight delivery, which shall be addressed to each party's Notice Address. From time to time, the parties may change the name and address of a party designated in the Notice Address. Such changes shall be in writing to the other party. Notices shall be deemed to have been provided at the time it is actually received in the case of hand delivery; within one day in the case of overnight delivery; or within five days after it is deposited in the U.S. Mail.

12.12. Cumulative Rights. The various rights, powers, options, elections, and remedies of the Agency provided for in this Agreement shall be construed as cumulative.

12.13. Severability. If any provision of this Agreement is determined by a court to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12.14. Timing. Vendor will provide the Services and provide all required Deliverables in accordance with the schedule set forth in the applicable Purchasing Document. Vendor shall ensure that all Vendor Personnel providing Services and Deliverables hereunder are responsive to the Agency's requirements and requests in all respects, including in accordance with any specific timelines identified in a duly executed Purchasing Instrument.

12.15. Authorization. Vendor represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action to approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Vendor, enforceable in accordance with its terms.

12.16. Successors in Interest. All terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, and legal representatives.

12.17. Records Retention and Access. Vendor shall maintain records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the Term of this Agreement (collectively, the "Records"), for a period of at least five years following the later of the date of final payment, termination, or expiration of this Agreement, or the completion of any audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the Agency, and where federal funds are involved, any authorized representative of the United States government, at no charge, and upon prior written notice, to access and examine, audit, excerpt, and transcribe any pertinent Records of Vendor, however stored, relating to Vendor's performance under this Agreement; provided, however, any such audits shall occur no more than once annually. Vendor shall require Vendor Contractors to agree to the same provisions as set forth in this subsection.

12.18. Headings and Captions. The Parties acknowledge that the headings and captions used in this Agreement are for convenience and reference purposes only. They are not intended to have any legal or substantive significance or alter the meaning or interpretation of the provisions they precede.

12.19. Multiple Counterparts and Electronic Signatures. This Agreement may be executed in several counterparts, each of which shall be considered an original and all of which when taken together shall constitute one contract binding on all Parties. The Parties agree to accept electronic signatures in lieu of "wet" signatures on contract documents in accordance with Iowa Code chapter 554D or other applicable law.

12.20. Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting a partnership, joint venture, or other association of any kind implying the establishment of an agent/principal relationship between the Parties.

12.21. Attachments. The Parties agree that if any document is attached hereto by the Parties, and referred to herein, then the same shall be deemed incorporated herein by reference as if fully set forth herein.

12.22. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

12.23. Force Majeure. If one Party is unable to fulfill its obligations under this Agreement due to circumstances beyond its control, including unforeseeable events that no one could have predicted or prevented, such as acts of God, war, civil disturbances, or other catastrophic events, that Party will not be considered in default. These circumstances must be abnormal and unforeseeable, and the Party affected must have taken all necessary precautions to prevent them. However, financial difficulties, legal restrictions, strikes, labor unrest, supply chain disruptions, internet failure, power outages, hacker attacks, viruses, and security breaches are not considered force majeure events. If a delay or inability to perform is caused by a subcontractor hired by the Party, the Party cannot use force majeure as an excuse unless the subcontractor is also affected by a force majeure event. If a force majeure event affects the Party's performance, the Party will make commercially reasonable efforts to provide an alternative, if possible, comparable solution. The Agency will determine whether the alternative solution is comparable. The Party invoking force majeure must immediately inform the other Party about the event causing the delay and the reasons behind it. Both Parties will work together to minimize the impact of the delay and the scope of work affected by the unforeseen events. If Vendor's performance obligations have specific deadlines, those deadlines will be extended by the amount of time lost due to the force majeure event.

12.24. Right of Inspection/Contract Compliance. Agency may inspect Vendor's books and records at reasonable times in order to monitor performance of this Agreement. All subcontracts shall contain provisions that allow the same. Vendor shall promptly comply with and correct any deficiencies noted in any audit and promptly implement any recommendations requested by the Agency. Vendor shall not impose any charge or fee in connection with any such audit.

12.25. Administrative Fees. Vendor shall provide a 1.00% administrative fee on all sales made through this Agreement, without affecting authorized prices/rates. This 1.00% administrative fee shall be paid quarterly to the Main Business Address, Attn: Business Services Division Administrator. Payment shall be made in accordance with the following schedule:

Period End	**Fee Due**
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

In addition, Vendor shall submit a report with each quarterly payment detailing all payments received and also identifying the particular agency making the purchase, the Purchasing Instrument number, and the project to which it is attributable.

12.26. Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Agency is exempt from the payment of Agency sales and other taxes:

https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf.

12.27. Title to Property. Title to all property furnished by the Agency to Vendor to facilitate the performance of this Agreement and any Customer-Owned Deliverables shall remain the Agency's sole property. Vendor shall be responsible for the proper custody and care of any such property and may not encumber such property or otherwise use such property for monetary gain. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Agency at the conclusion of the Agreement.

12.28. Exclusivity. This Agreement is not exclusive. The Agency may obtain similar or identical goods or services from other vendors.

12.29. Award of Related Agreements. The Agency may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with Authorized Contractors who may be engaged by the Agency in connection with this Agreement.

12.30. Survives Termination. This Section 12 (*General Provisions*) shall survive termination or expiration of the Agreement.

Attachment B

Special Terms and Conditions

1. **Payment Table.** For services provided under this Contract, Vendor will be compensated using the blended hourly rates. The rates are "fully loaded," meaning that the rates include any and all necessary travel and other expenses for providing the following range of services:

Area	Blended Hourly
Community Outreach	$175.66
Grant Program Compliance and Monitoring	$171.33

The hourly rates listed above apply during the base term of the Contract. Any options to renew for the seven additional one-year terms would be subject to a renegotiation of rates.

Purchasing Instruments entered into pursuant to this Contract shall be in substantial compliance with the Purchasing Instrument format and shall detail both the specific scope of work and any pricing limitations imposed on the Purchasing Instrument scope.

2. **Services Covered.** Services that a state agency may purchase through this master agreement include the following:

   2.1 Community Outreach (RFP § 4.3.2).

   2.2 Grant Program Compliance and Monitoring (RFP § 4.3.4).

3. **Insurance.**

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

Type	Limit	Amount
General Liability (including contractual liability) written on a per occurrence basis	General Aggregate	$2 million
	Products – Comp/Op Aggregate	$1 Million
	Personal injury	$1 Million
	Each Occurrence	$1 Million
Excess Liability, Umbrella Form	Each Occurrence	$1 Million
	Aggregate	$1 Million

Errors and Omissions Insurance	Per Claim	$1 Million
Property Damage	Each Occurrence Aggregate	$1 Million $1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law

3.1. **Insurance Requirements**

The Vendor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Vendor's expense, insurance covering its work during the entire term of this Agreement and any extensions or renewals thereof. The Vendor's insurance shall insure against any loss or damage resulting from or related to the Vendor's performance of this Agreement 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 on Vendor's General Liability and Umbrella policies via blanket endorsement.

3.2. **Types and Amounts of Insurance Required**

Unless otherwise requested by the Agency in writing, the Vendor shall cause to be issued insurance coverages insuring the Vendor 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. Vendor shall ensure its subcontractors acquire and maintain sufficient insurance in accordance with the provisions in this Section 3. In addition, the Vendor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

3.3. **Certificates of Coverage**

Vendor shall maintain all insurance policies required by this Agreement in full force and effect during the entire term of this Agreement and any extensions or renewals thereof. The Vendor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Agreement, to the Agency upon execution of this Agreement. The certificates shall be subject to approval by the Agency. Vendor shall endeavor to provide Agency at least thirty (30) days' prior written notice of any cancellation or non-renewal of the policies required under this Agreement where such cancellation or non-renewal does not result in equal or greater coverage. Approval of the insurance certificates by the Agency shall not relieve the Vendor of any obligation under this Agreement.

3.4. **Waiver of Subrogation Rights**

The General Liability policy shall include a waiver of subrogation via blanket endorsement in favor of the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.