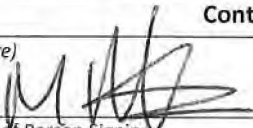


Iowa Department of Administrative Services
Contracts Declaration & Execution Page

Title of Contract: Instructional Materials Production Tracking Software		Bid Proposal Number RFP1722131001	Contract Number 22253
This Agreement is entered into between the State of Iowa (by and through its agency, the Department of Administrative Services) and the Contractor named below:			
State Agency's Name: Iowa Department for the Blind			
Contractor's Name: Brackenwood Consulting, LLC			
Contract to Begin: 4/1/2022	Date of Expiration: 3/31/2023	Annual Extensions: 5	
The parties agree to comply with the terms and conditions and attachments which are by this reference made a part of the Agreement: Section 1 – Terms & Conditions Page 2 Section 2 – Scope of Work..... Page 28 Section 3 – Pricing..... Page 36 Section 4 – Contacts Page 39 Attachment 1 – Additional IT Terms and Conditions..... Page 40			

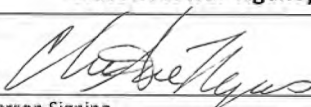
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto

Contractor: Brackenwood Consulting

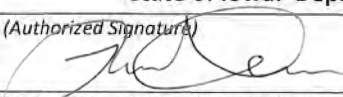
By (Authorized Signature) 	Date Signed 3/29/2022
Printed Name and Title of Person Signing Martin Atterbury - Partner	
Address	

10808 South River Front Parkway, Suite 3108, South Jordan, UT 84095

State of Iowa: Agency Iowa Department for the Blind

By (Authorized Signature) 	Date Signed 03/29/2022
Printed Name and Title of Person Signing Cheri Myers, Chief Financial Officer, IDB	
Address 524 Fourth Street Des Moines, IA 50309	

State of Iowa: Department of Administrative Services – Central Services Enterprise

By (Authorized Signature) 	Date Signed 3/30/2022
Printed Name and Title of Person Signing Laura Shannon – Purchasing Agent 3	
Address 1305 East Walnut, Level 3, Des Moines, IA 50319	

SECTION 1 Terms & Conditions

1.1 Definitions

The following words shall be defined as set forth below:

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

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

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

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

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

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

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

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

"RFP" means the Request for Proposals or Request for Bids (and any Addenda thereto) that was issued to solicit the Deliverables that are subject to the Contract.

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

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

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

1.2 Availability of Contract to Other Entities

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

1.3 Duration of Contract

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

1.4 Scope of Work

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

1.5 Compensation

1.5.1 Pricing

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

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

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

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

1.5.2 Reimbursement Expenses

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

1.5.3 Withholding Payments

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

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

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

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

1.5.4 Setoff Against Sums Owed by the Contractor

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

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

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

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

1.6 Termination

1.6.1 Immediate Termination by the State

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

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

- 1.6.1.2** The State determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;
- 1.6.1.3** The Contractor fails to comply with confidentiality laws or provisions;
- 1.6.1.4** The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

1.6.2 Termination for Cause by the Agency

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

- 1.6.2.1** Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- 1.6.2.2** Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 1.6.2.3** Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- 1.6.2.4** Contractor terminates or suspends its business;
- 1.6.2.5** Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- 1.6.2.6** Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- 1.6.2.7** The Agency determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Agency or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;

- 1.6.2.8** Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
- 1.6.2.9** Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- 1.6.2.10** Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:
 - 1.6.2.10.1** Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - 1.6.2.10.2** Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
 - 1.6.2.10.3** Making an assignment for the benefit of creditors;
 - 1.6.2.10.4** Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or
 - 1.6.2.10.5** Taking any action to authorize any of the foregoing. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

1.6.3 Termination upon Notice

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

1.6.4 Termination Due to Lack of Funds or Change in Law

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

1.6.4.1 The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or

1.6.4.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or

1.6.4.3 If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

1.6.4.4 If the Agency's duties, programs or responsibilities are modified or materially altered; or

1.6.4.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract. The Agency shall provide Contractor with written notice of termination pursuant to this section.

1.6.5 Limitation of the State's Payment Obligations

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

accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

- 1.6.5.1** The payment of unemployment compensation to Contractor's employees;
- 1.6.5.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- 1.6.5.3** Any costs incurred by Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- 1.6.5.4** Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract;
- 1.6.5.5** Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

1.6.6 Contractor's Termination Duties

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

- 1.6.6.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Agency may require.
- 1.6.6.2** Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.
- 1.6.6.3** Cooperate in good faith with the Agency and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
- 1.6.6.4** Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor.
- 1.6.6.5** Immediately deliver to the Agency any and all Deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

1.6.7 Termination for Cause by Contractor

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

1.7 Confidential Information

1.7.1 Access to Confidential Information

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

1.7.2 No Dissemination of Confidential information

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

1.7.3 Subpoena

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

1.7.4 Reporting of Unauthorized Disclosure

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

1.7.5

If Contractor requests confidential treatment with respect to any information or material contained within its Bid Proposal and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such

material from a court of competent jurisdiction. Agency may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Agency determines the information or material is not confidential under Iowa or other applicable law, or if Contractor failed to properly request confidential treatment under the RFP, or if Contractor rescinds its request for confidential treatment.

1.7.6 Survives Termination

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

1.8 Indemnification

1.8.1 By the Contractor

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

1.8.1.1 Any breach of this Contract;

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

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

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

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

1.8.2 Survives Termination

Contractor's duties and obligations under this section shall survive the termination of this Contract and shall apply to all acts or omissions taken or made in connection with

the performance of this Contract regardless of the date any potential claim is made or discovered by the Agency or any other Indemnified Party.

1.9 Insurance

1.9.1 Insurance Requirements

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

1.9.2 Types and Amounts of Insurance Required

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

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 million
	Products –	
	Comp/Op Aggregate	\$1 Million
	Personal injury	\$1 Million
	Each Occurrence	\$1 Million
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	\$1 Million
Excess Liability, umbrella form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Errors and Omissions Insurance	Each Occurrence	\$1 Million
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law
Cyber Security	Each Occurrence	\$5million
	Aggregate	\$5million

1.9.3 Certificates of Coverage

Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract and any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the Agency. The Contractor shall submit certificates of the

insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Agency. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

1.9.4 Waiver of Subrogation Rights

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

1.10 Project Management & Reporting

1.10.1 Project Manager

At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the Deliverables being provided under this Contract.

1.10.2 Review Meetings

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

1.10.3 Reports

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

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

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

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

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

1.10.4 Problem Reporting Omissions

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

1.10.5 Change Order Procedure

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

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

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

1.10.5.3 Acceptance of the Contractor Estimate: If the Agency accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract.

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

1.11 Legislative Changes

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

1.12 Intellectual Property

1.12.1 Ownership and Assignment of Other Deliverables

This is not a work-made-for-hire agreement (as that term is defined in Section 101 of

Title 17 of the United States Code) with regard to either Party. Except for express licenses granted in this Agreement, neither Party is granting nor assigning to the other Party any right, title, or interest, express or implied, in or to the Party's intellectual property. Each Party reserves all rights in such property. To the extent Vendor provides any intellectual property to the State of Iowa in connection with the Services, such intellectual property shall be deemed part of and included in the definition of "Services" hereunder and, among other things, be subject to the license granted in Section 2.

1.12.2 Waiver

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

1.12.3 Further Assurances

At the Agency's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in this Contract.

1.13 Warranties

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

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

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

1.13.3 Contractor represents and warrants that: (1) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such

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

- 1.13.4 Contractor represents and warrants that the Deliverables (in whole and in part) shall:** (1) be free from material Deficiencies; and (2) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Special Terms. During the Warranty Period Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five business days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the Agency's satisfaction, Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

1.13.5 Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Agency any fees or compensation paid to Contractor for the unsatisfactory services.

1.13.6 Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board, the Iowa Department of Administrative Services, and Iowa Office of the Chief Information Officer.

1.13.7 Obligations Owed to Third Parties

The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Agency will not have any obligations with respect thereto.

1.14 Acceptance Testing

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

Tests with respect to any Deliverable that Contractor has attempted to correct or repair pursuant to this section, that such Deliverable fails to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to:

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

1.15 Contract Administration

1.15.1 Independent Contractor

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

1.15.2 Incorporation of Documents

To the extent this Contract arises out of an RFP, the parties acknowledge that the Contract consists of these contract terms and conditions as well as the RFP and the Bid Proposal. The RFP and the Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by the Contractor to the provisions of the RFP shall be incorporated by reference into the Contract unless the Agency has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict

between the Contract, the RFP and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) the Bid Proposal.

1.15.3 Intent of References to Bid Documents

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

1.15.4 Compliance with the Law; Nondiscrimination in Employment

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

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

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

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

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

Deliverables developed under this Contract and the copyright in and to such Deliverables.

1.15.5 Procurement

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

1.15.6 Non-Exclusive Rights

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

1.15.7 Non-Supplanting Requirement

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

1.15.8 Compliance with Iowa Code chapter 8F

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

1.15.9 Amendments

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

1.15.10 Third Party Beneficiaries

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

1.15.11 Use of Third Parties

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

1.15.12 Choice of Law and Forum

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

1.15.13 Assignment and Delegation

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

1.15.14 Integration

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

1.15.15 Headings or Captions

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

1.15.16 Not a Joint Venture

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

1.15.17 Joint and Several Liability

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

1.15.18 Supersedes Former Contracts or Agreements

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

1.15.19 Waiver

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

1.15.20 Notice

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

1.15.20.1 At the time it is actually received; or,

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

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

1.15.21 Cumulative Rights

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

1.15.22 Severability

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

1.15.23 Time is of the Essence

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

1.15.24 Authorization

Contractor represents and warrants that:

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

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

1.15.25 Successors in Interest

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

1.15.26 Records Retention and Access

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

1.15.26.1 Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.

1.15.26.2 The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.

1.15.26.3 The Contractor, in maintaining project expenditure accounts, records and

reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Agency.

1.15.26.4 The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.

1.15.26.5 The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

1.15.27 Audits or Examination of Records

1.15.27.1 Contractors that expend \$750,000 or more in a fiscal year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Single audits must be completed and the data collection form and reporting package must be submitted electronically to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after Contractor's receipt of the auditor's report(s), or nine months after the end of the audit period. The Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Contractor shall also submit one (1) copy of the final audit report to the Agency within thirty (30) days after Contractor's receipt thereof, if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.

1.15.27.2 If a Contractor is independently audited but is not required to submit the audit report per the criteria in subsection 1.15.27.1 above, the Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Within fifteen (15) days following Agency's request, the Contractor shall also submit one (1) copy of the final audit report to the Agency.

1.15.27.3 The Agency may require, at any time and at its sole discretion, that recipients of non-federal and/or federal funds have an audit performed. The Contractor shall submit one (1) copy of the audit report to the Agency within thirty (30) days of its issuance, unless specific exemption is granted in writing by the Agency. The Contractor shall submit with the audit report a copy of the separate letter to management addressing non-material findings, if provided by the auditor. The Contractor may be required to comply with other prescribed compliance and review procedures.

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

1.15.28 Qualifications of Staff

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

1.15.29 Solicitation

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

1.15.30 Obligations Beyond Contract Term

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

1.15.31 Counterparts

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

1.15.32 Delays or Impossibility of Performance

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

1.15.33 Suspensions and Debarment

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

1.15.34 Conflict of Interest

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

desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Agency.

1.15.35 Certification Regarding Sales and Use Tax

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

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

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

1.15.37 Repayment Obligation

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

1.15.38 Further Assurances and Corrective Instruments

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

1.15.39 Reporting Requirements

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

1.15.40 Immunity from Liability

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

1.15.41 Public Records

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

1.15.42 Use of Name or Intellectual Property

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

1.15.43 Taxes

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

1.15.44 No Minimums Guaranteed

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

1.15.45 Performance Security

The Contract requires the Contractor to provide security for performance [e.g. performance bond, escrow, letter of credit, liquidated damages]. Agency shall retain ten percent (10%) of each payment due under the Contract. Agency shall pay the retained amount only after all Deliverables have been completed by the Contractor and accepted by the Agency.

1.15.46 Quarterly Report

The Contractor shall provide an electronic detailed quarterly report on all sales made under this agreement within the State of Iowa via E-Mail to the Iowa Department of Administrative Services, Central Services Enterprise, Attn: Laura Shannon, laura.shannon@iowa.gov. The report file format shall be Microsoft Excel compatible format. The report at a minimum shall include the date of sale, customer name and address, full product description, SKU Numbers, quantity, invoice number, unit and extended invoice prices. Contractor proposals must include a sample report and a description of the reporting that will be provided. The State reserves the right to request more detailed information (ad-hoc reporting) at any time and on an individual or specific basis for a specific product, department, time frame, or for a range of products, departments or time frames.

1.15.47 Administrative Fee

Without affecting the approved Good or Service prices or discounts specified in the Master Agreement, the State of Iowa shall be entitled to receive a one percent (1.00%) administrative fee on all sales made within the State of Iowa against this agreement. The administration fee due to the State of Iowa shall be paid quarterly by Contractor directly to the State, made payable to the "Iowa Department of Administrative Services – Central Services Enterprise."

SECTION 2 Scope of Work

2.1 General Specifications

Deliver to Iowa Department for the Blind (IDB) a fully configured, dedicated Athena instance integrated with the existing IDB LMS. Athena is cloud-hosted software designed specifically for accessible instructional material centers. It allows teachers to place orders online, based on a real-time inventory position and then provides customized workflows to manage the procurement, production, and shipping of the material and provide online and email notification status updates back to the teacher.

- 2.1.1 Architecture** - Athena will use three tier architecture, logically and physically separating the application into Presentation, Logic and Data tiers. This allows targeted development, easier maintenance, and infrastructure scaling across distinct tiers within the architecture. Athena will host all 3 tiers within the cloud and the application is accessed locally on a user's computer via their web browser. Athena's architecture will be designed to meet the requirement for users with web browsers to securely access all system functionality.
- 2.1.2 Hosting** - The system will be hosted by Amazon Web Services (AWS). The system will be hosted in an AWS data center in Ohio. Ohio was chosen because of its proximity to Iowa, where most IDB users are located. Proximity to Iowa is important to minimize system latency.
- 2.1.3 System Updates for Security and Functionality** – Contractor will update the services and client codes when the regularly scheduled AWS security and performance updates and bug fixes are complete. Two separate Athena systems (including both data and services) are in use - one for testing and a second for production. All code changes and bug fixes are first deployed by the Contractor to the test system and then will be signed off by IDB before the Contractor deploys those changes to the production system.
- 2.1.4 System Space and Environmental Requirements** - Athena will be initially configured with the lowest tier of database storage for an AWS based system, which starts at a minimum of 20 gigabytes. Additional space can be allocated if required. All Athena services run in an AWS Service called Elastic Beanstalk. The name EBS refers to the scalability of the EBS Service. When production usage is high, EBS can automatically increase the amount of memory and compute power available to the production services to accommodate demand. Other than a web browser, there are no additional environmental requirements for a user's PC.
- 2.1.5 Connection to Existing Library System** - Athena will connect to the existing library system through a web-based Application Programming Interface (API). Athena uses existing external APIs to Google for both authentication and book search functionality. For an existing library system (LMS), the Contractor will present three levels of integration that may be possible although detailed analysis and design. The method chosen will be determined by the API capabilities of the LMS.

2.1.6 Hardware and Equipment – The Contractor will not provide any hardware or equipment. Athena will run on any desktop computer or laptop that can run the Google Chrome browser. The Contractor will use Open-Source software components, written for the Linux platform. AWS has its own version of Linux which supports all Open-Source software embedded in Athena.

2.1.7 Data Types

2.1.7.1 Inventory Data - Athena uses a strict data hierarchy to manage relationships between the material in inventory and those being created. This data hierarchy allows for efficient re-use of common data while preserving data integrity across the system. Book Records are unique for a given ISBN and format and contain information about the material which is common for all associated copies e.g., title, subtitle, author, copyright date, publisher. There can be many copies associated with a single book record, copies represent a single instance of the material and contain information specific to itself, such as layout properties. Volumes are the physical material that is stored and shipped, they are uniquely identified and tied back to Athena via a spine label containing a barcode. Many volumes may be associated with a given copy.

2.1.7.2 User Data - User data is maintained within Athena for all users who require access to the system. Each user is assigned a unique ID to ensure their profile details map directly. Users, once added by the administrator, will have provisions via their profile page to manage their information. This profile information will be used across Athena to streamline activities such as raising orders. User type is a critical piece of data used within Athena to determine which pages and functionality is available to that user, it is controlled by application administrators. Athena also maintains data on users not expected to login but whose details are required for specific workflows. These users include student details, which will be maintained directly by their teachers, and external vendor information maintained by admins and coordinators. This external user information is also uniquely identified throughout Athena to preserve data integrity but allow quick reuse of the information stored.

2.1.7.3 Order Information - Orders are created per student for a given school year and include their material requirements. Many order items can be requested against a single order. The order is also where contact and preferred shipping details are captured. An order item is a requested copy, or electronic material, assigned to an order. Order items are unique to a given order and there is a one-to-many relationship between an order and order items. Prerequisites are tracked against an order item to ensure all the necessary inputs are available to create new material. Orders and Order Items are uniquely identified to accurately manage the relationships between all order objects and their corresponding inventory counterparts. This enables dynamic events to be created at all levels of the hierarchy to accurately track the progress of orders, production, and circulation.

2.1.7.4 Static Data - Various other data types are grouped together under static data which will be maintained by admins through the Admin profile. Examples of some of the more critical static data types are outlined below:

- **School/District Information** – Administrators will define the available schools and address information, linking directly to school districts which will maintain information such as superintendents and further address information. Teachers when creating their profile will select which schools they are associated with ensuring high-quality contact and shipping information.
- **Materials and Cost Information** – As technicians work on producing material, they will have the option of capturing the materials used to create directly within Athena. The materials available to technicians to select, and associated costs, are maintained through the administrator's profile.
- **Technician Rates** – As with materials, technicians will capture the time they have worked on creating material. Athena maintains hourly rates for all technician user types so that total cost can be calculated automatically.

2.1.8 Login Portal - Athena will be accessed by all users through a dedicated URL with a link embedded within your existing web pages. When the user clicks on the link, they will be directed to Athena Login Page. Multiple levels of authentication are required before a user can access Athena. Passwords are not stored in Athena and instead use secure Third-Party Authentication suppliers, such as Google. Once the user is securely authenticated with the third party, Athena then checks the local user tables administered by IDB to ensure they have access permission. Users can be added and removed through the User Administration tables in the Athena Admin Profile. For additional protection, Athena can lock down these administrative permissions to specific users.

2.1.9 Material Orders - Athena will determine the user type and direct them to the correct landing page which is customized for their specific requirements. From this page, the teacher will be able to:

- Create an Order
- View and amend existing orders
- Check Order Status
- Download Electronic Material
- View details on books and individual volumes
- Setup and amend their Profile details

The landing page is laid out in various summary grids, each with the intention of presenting data simply and allowing that data to be filtered for ease of use. A sidebar is provided on the left-hand side of the page to allow easy navigation via shortcuts to these various summary grids. Within each of the summary grids, the data returned can be filtered, downloaded, and searched.

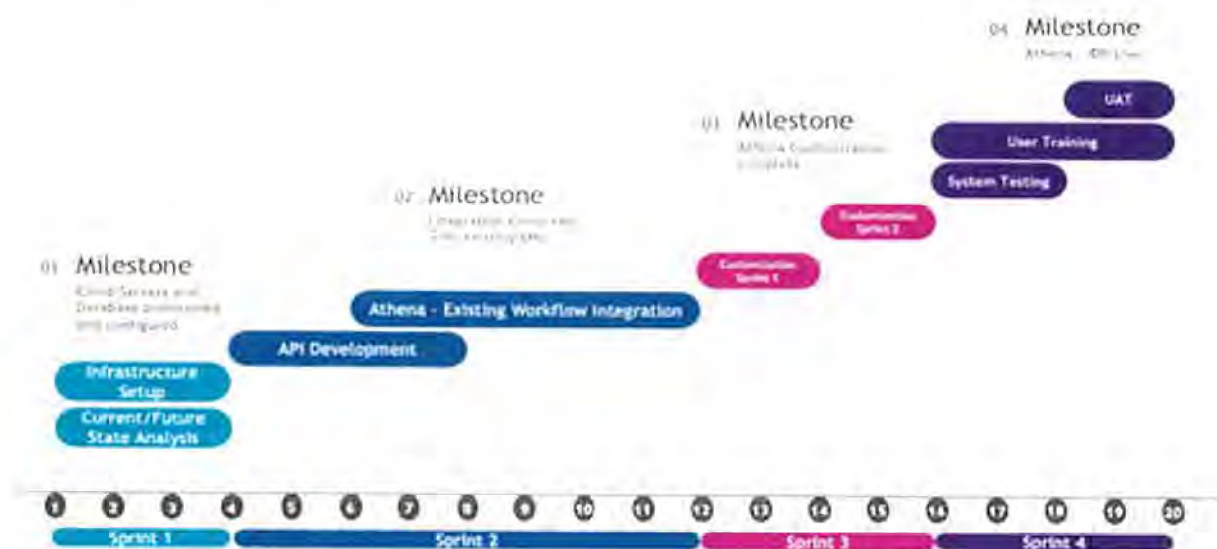
2.1.10 Document Access - The teacher will have the ability to attach documents to a specific order item. These documents can then be downloaded from within Athena. The teacher

may upload multiple files that are relevant to the material being requested. The uploaded file is attached to this order item and can be viewed by in-house staff once the order has been submitted.

2.1.11 Viewing the Status of Orders - Status will be maintained against both Orders and Order Items within Athena and can be viewed by Teachers, technicians, circulation users and coordinators.

2.1.12 Prerequisite Information - Prerequisites will exist for both Order and Order Items. Order level prerequisites cover administrative items which should be in place before an order is approved and apply to all orders. Order Item prerequisites are only applicable to material requiring production and track items which will be essential to manufacture the requested material.

2.2 Implementation Plan



The implementation plan will take approximately 20 weeks from when the work starts to the point where users are able to login to Athena and begin placing orders. This includes two months of effort to integrate with the existing LMS and rework existing Athena workflows and logic where necessary. The Contractor will work closely with IDB and LMS third parties to drill down on the requirements to deliver a baselined plan with greater confidence on timelines.

This includes identifying hard dependencies that exist outside of the control of the Contractor. Where these are identified, the Contractor will work collaboratively to identify the right solution, realistic timeframes and then track through to completion. The table below provides additional details on the delivery, including material assumptions which underpin both the deliveries and the timelines.

Sprint	Definition of Done	Key Deliverables	Material Assumptions
Sprint 1	1) Dedicated Athena Cloud environment provisioned and available 2) Current and Future Workflow Mapping completed including integration touchpoints between Athena and LMS	• Dedicated and Secure IT Infrastructure for IDB configured within AWS • Athena IDB database tables and services • Detailed workflow mapping documents capturing future state requirements • Documented Requirements for LMS Integration	• The Contractor will have access to IDB staff to map future state workflows • The Contractor will have access, directly or indirectly, to third party LMS vendor to initiate API discussions.
Sprint 2	1) LMS API Development Completed 2) Existing Workflows fully integrated with existing LMS system, in line with design from Sprint 1.	• Athena IDB Integrations with LMS complete • Software development completed to integrate Athena Workflows with LMS • LMS Software Development completed (if required) to process Inventory events from Athena • Initial Data Migration Scope identified, and approach agreed	• LMS Third Party has development capacity and can meet project timelines (if required) • No significant rewrite of Athena functionality as a result of integration
Sprint 3	1) Athena Customizations completed	• Scope to be determined based on future state workflows identified in Sprint 1	• It is assumed that some level of customization will be required
Sprint 4	1) Sign off from IDB that Athena functions as expected 2) Training Completed 3) Reference Material Available for all users	• Completed System and Regression Testing by the Contractor • Test environment running production ready code for User Acceptance Testing • User Training, approach to be determined • User Guides for all User Types	• IDB staff will have capacity to complete end to end user acceptance testing • Test bugs will be prioritized and all showstopping bugs will be addressed prior to implementation • The Contractor will play some part in User Training

The following project governance plan is intended to create regular touchpoints between the project and key sponsors, stakeholders, and contributors during the lifecycle of the project:

Governance Item	Purpose	Audience	Frequency
Sprint Planning and Retrospective	1) Define scope for next sprint 2) Review progress from completed sprint 3) Track tasks assigned across the team 4) Collaboratively troubleshoot issues	Active project participants	To be agreed
Steering Committee	1) Primarily a <u>decision making</u> forum 2) Review critical risks and issues 3) Track performance to plan and review overall <u>high level</u> project status	Project Sponsor and Senior Stakeholders	Monthly
Project Status Report	1) Email report of project status, including progress made that week and focus areas for the next 2) Overall status of the project 3) Key successes and challenges	All stakeholders	Weekly

2.3 Project Roles and Responsibilities

2.3.1 Project Manager/Business Analyst

- Overall PM responsibility for Project
- Stakeholder Identification and Management
- Responsible for timely and accurate Project Reporting and Governance
- Maintain RAID log and ensure Risks and Issues are proactively dealt with
- Create and maintain detailed project plan to track progress
- Ensure invoices are accurate and timely with project costs accurately tracked
- Responsible for Change Request Process
- Accurate capture of system requirements
- Define and execute system testing approach
- Co-ordinate User Acceptance Test

2.3.2 Technical Architect/Developers

- Architecture
- Technical Design
- Product and Licensing Decisions
- Product Development
- Unit Testing
- Assist with execution of System Testing
- Assist with User Acceptance Testing

2.3.3 IDB Responsibilities

- Requirement definition and input into design workshops
- Attendance at Working Groups and Monthly Steering Committees
- Overall Product Acceptance (UAT)

2.3.4 LMS Responsibilities

- Work with IDB and the Contractor to determine the best integration approach
- Develop and test LMS API
- Provide LMS test environment for Athena development and end to end testing

2.4 Accessibility

Athena must comply with the following WCAG 2.0 A & AA requirements:

- Colors do not denote state without accompanying text
- No video played anywhere on Athena
- Where sounds are played, they are accompanied by text (Athena uses a short beep to confirm barcode scans when managing material shipping and returns)
- Aria labels aid screen reader user
- Athena is keyboard accessible throughout
- Meaning is not conveyed through Shape, Size alone
- Headings are in logical order
- Color contrast is compliant with WCAG AA standards
- Navigation elements are consistent throughout the site
- Where forms are used, fields are labelled accurately

The Contractor will work with accessibility experts to identify further improvements and address, at no cost, should remediation be required.

2.5 Security

The Contractor will ensure that Athena and AWS comply with the following security standards:

- SOC 1/ISAE 3402, SOC 2, SOC 3
- FISMA, DIACAP, and FedRAMP
- PCI DSS Level 1
- ISO 9001, ISO 27001, ISO 27017, ISO 27018

Athena will provide a secure connection to the login service. Maintain a secure HTTPS connection that is encrypted bidirectionally and will isolate database servers from the internet.

The Athena installation for IDB will have its own computational systems for web services and database servers, and it will also have its own unique URL. Keeping with the current Athena naming conventions, the base URL for IDB will be www.athena-ia.com.

2.6 Availability and Backups

The Contractor will ensure that Athena is available 24/7. System updates to happen as frequently as monthly, and to be done on weekends. The system is to be available during database back-ups. The Contractor will provide for configurable automatic database backups. IDB will be able to specify time-of-day, frequency and retention schedules that best meet their specific needs.

2.7 Reporting

The Contractor will ensure that Athena provides Inventory, Ordering, Purchasing, Production, User data, and Ad hoc reports. In addition, the Contractor will ensure Athena includes a real-time reporting dashboard for Inventory Reconciliation.

2.8 Training and Tutorials

Training sessions will be conducted either in person or remotely based on IDB requirements and will be supported by detailed training materials and user guides. User guides are to be made

available for all users, that provide end to end steps for all aspects of functionality. These will be distributed to IDB to use as they see fit ahead of the implementation and in conjunction with the training.

2.9 Optional Features

- The Contractor will embed **Help Buttons** throughout Athena linking to directly relevant help articles for the given page and functionality.
- The Contractor will provide **Online Order Information Reporting Dashboards** that provide real time business intelligence at-a-glance to coordinators and administrators, build on the reporting dashboards available for Inventory Reconciliation to define applicable metrics for orders and then implement interactive charts and counts.

2.10 Service and Maintenance

The Contractor will provide a Service Level Agreement (SLA). The Contractor guarantees the availability of Athena application software to 99% up-time. IDB has selected SLA Option One (1) described below:

- Option One (1) consists of: One machine as webserver (EC2 - AWS Elastic Compute virtual machine) and a second as a database server (RDS - AWS Relational Database virtual machine), both residing in one datacenter. AWS guarantees 95% up-time of this configuration.

2.11 Performance Measures

Per section 1.15.45 of this contract, the Agency shall retain ten percent (10%) of each payment due under the Contract. The Agency shall pay the retained amount forty-five (45) days after all Deliverables - Section 2.2 Sprint 4 - have been completed by the Contractor and accepted by the Agency.

SECTION 3 Pricing

3.1 Prorated cost for first twelve (12) months:

The cost for the first 12 months of Athena is \$187,250.00. This is comprised of a one-off charge required to configure Athena and integrate with the existing LMS, selected optional features, plus a prorated Tier 2 Annual Use Charge for the remainder of the 12-month period. A summarized view of the first-year costs is provided in the table below and further breakdowns of these charges are detailed in the relevant sections of this document.

Component	Unit	Unit Price	Quantity	Quarterly Charge	Prorated Charge (7 Months)
Athena Teacher License - Tier 2 fewer than 200 users	-	-	-	\$19,425	\$45,325
Support & Maintenance	Support Hours	\$60	375	\$5,625	\$13,125
Hosting Charges	Monthly Hosting	\$400	12	\$1,200	\$2,800
			Recurring Charges Total	\$26,250	\$61,250
One Off Charge - Onboarding	-	\$96,000	1		\$96,000
One Off Charge - Help Feature	-	\$10,000	1		\$10,000
One Off Charge - Order Dashboard	-	\$20,000	1		\$20,000
			One Off Charges Total		\$126,000
			Grand Total (First 12 Months)		\$187,250

The following optional features: “**Help Buttons**” and “**Online Order Information Reporting Dashboards**” have been selected by IDB and the costs are included in the year one total:

Optional Feature	Description	Benefit	Cost
Host Athena across multiple AWS Regions.	Increase resilience and minimize downtime, in the event of an outage, by configuring a dedicated Athena-IDB setup outside of the primary region. With data replication between the two sites, this allows for a quicker return to business should infrastructure fail in the primary center.	Reduce dependency on a single AWS region and provide timely recovery options in the event of infrastructure failure.	Increases hosting charge as infrastructure requirements are doubled. Therefore, for the first year this results in an increase of \$2,100. Total increase for the full potential term of 6 years is \$20,100
Provide Help Buttons built into Athena	For critical workflows and pages, help buttons would be added allowing the user to quickly access contextual help articles to guide them through common workflows.	Increased ease of use and accessibility, reducing the reliance on IDB and Brackenwood Support staff to answer ‘how-to’ questions.	\$10,000
Online Order Information Reporting Dashboards	Build on the reporting dashboards available for Inventory Reconciliation to define applicable metrics for orders and then implement interactive charts and counts.	Provide real time business intelligence at-a-glance to coordinators and administrators.	\$20,000

3.2 Onboarding Costs - See table below:

FTE	FTE Hourly Rate	Duration (Weeks)	Total Cost
2	\$60	20	\$96,000

3.3 Recurring subscription charge

Recurring subscription charge for use of Athena, which includes:

- Application Licenses for those placing orders
- Application Support and Maintenance Charges
- Cloud Hosting Charges

Tier One

Tier Two

Tier Three

Max Users	100	200	300
Support Hours	250	375	500
Hosting Charges	\$300	\$400	\$500
Price	\$72,600	\$105,000	\$140,000

Scope of Tier 2 charges:

- Unlimited licenses for you and your staff
- 200 licenses for teachers to place and review their orders
- Support and Maintenance: 375 hours per year, support is available 24 hours a day, seven days a week.
- Hosting Charges: Resilient hosting, security, and backup by our preferred cloud supplier (Amazon Web Services): \$400 per month.

3.4 Estimated Cost

The estimated cost including all charges incurred in year one but excluding further customizations, is \$712,250.00. This is broken down by contract year in the table below.

	Onboarding Charge	Optional Features	Tier 2 Subscription Charges
Year 1	\$96,000	\$30,000	\$61,250
Year 2	-	-	\$105,000
Year 3	-	-	\$105,000
Year 4	-	-	\$105,000
Year 5	-	-	\$105,000
Year 6	-	-	\$105,000
Grand Total	\$712,250		

3.5 Customizations

Once the application is in use, if further customizations are required, they will be quoted on a time and materials basis. These deliveries will include fully tested and operational functionality and updates to supporting documentation as required.

SECTION 4
Project Managers

4.1 Project Manager -Brackenwood Consulting

Martin Atterbury - Partner
10808 South River Front Parkway – Suite 3108
South Jordan, UT 84095
385-528-9088
martin.atterbury@brackenwoodconsulting.com

4.2 Project Manager - State of Iowa

Sarah J. Willeford
Iowa Department for the Blind
524 4th Street
Des Moines, IA 50309
515-494-8439
sarah.willeford@blind.state.ia.us

4.3 State of Iowa – DAS/Procurement Contact

Laura Shannon – Purchasing Agent 3
1305 E. Walnut – Level 3
Des Moines, IA 50319
515-330-7325
laura.shannon@iowa.gov

Attachment #1
Additional Information Technology Terms and Conditions

1. **Definitions.** Capitalized terms not defined herein are as defined in the General Terms. The following capitalized terms shall have the following meanings:
 - 1.1. **"Authorized Contractors"** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by any Governmental Entity to use, maintain, support, modify, enhance, host, or otherwise assist a Governmental Entity with any Deliverables provided pursuant to any General Terms.
 - 1.2. **"Confidential Information"** means, subject to any applicable federal, State, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party (**"Disclosing Party"**) to the other Party (**"Receiving Party"**) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.
 - 1.3. **"Customer Data"** means all information, data, materials, or documents (including Confidential Information of or belonging to any applicable Governmental Entity) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from a Governmental Entity making purchases pursuant to any General Terms, including Authorized Contractors of the foregoing, or otherwise related to a General Terms in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Contractor, Contractor Contractors, or Contractor Personnel in connection with any Deliverables provided pursuant to any General Terms.
 - 1.4. **"Customer Property"** means any property of or belonging to a Governmental Entity making purchases pursuant to a General Terms, including Customer Data, software, hardware, programs or other property possessed, owned, or otherwise controlled or maintained by a Governmental Entity.
 - 1.5. **"Customer-Owned Deliverables"** means any Deliverables discovered, created, or developed by Contractor, Contractor Contractors, or Contractor Personnel at the

direction of the applicable Governmental Entity or for a Governmental Entity or for a specific project pursuant to any General Terms, 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.

- 1.6. **"Deliverables"** means all of the goods, Services, Software, System, work, work product, items, materials, property, and/or related Documentation to be created, developed, produced, delivered, performed or provided by or on behalf of, or otherwise made available through, Contractor, Contractor Contractors, or Contractor Personnel, directly or indirectly, in connection with any General Terms.
- 1.7. **"Documentation"** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by Contractor, Contractor Contractors, or Contractor 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.
- 1.8. **"Governmental Entity"** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision thereto. The term Governmental Entity includes without limitation Participating Agencies, agencies, independent agencies, the Judicial Branch, the Legislative Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government.
- 1.9. **"I.T. Governance Document(s)" or "Governance Document(s)"** means any Information Technology policies, standards, processes, guidelines, or procedures developed by OCIO pursuant to Iowa Code section 8B, *available at: <https://ocio.iowa.gov/>* (navigate to policies, standards, rules, respectively), and which are generally applicable to Participating Agencies, absent a waiver granted pursuant to Iowa Code section 8B.21(5) or any corresponding implementing rules.
- 1.10. **"Office of the Chief Information Officer" or "OCIO"** means the Office of the Chief Information Officer of the State of Iowa created by Iowa Code chapter 8B.
- 1.11. **"Non-Appropriation Event"** means any of the following:
 - a. The legislature or governor fail, in the sole opinion of the applicable Governmental Entity, to appropriate funds sufficient to allow the Governmental Entity to either meet its obligations under any General Terms, or to operate as required or to fulfill its obligations under any General Terms.
 - b. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by a Governmental Entity (regardless of the source of funding or revenues) to make any payment under any General Terms are insufficient or unavailable for any other reason as determined by the Governmental

Entity in its sole discretion;

- c. If a Governmental Entity's authorization to conduct its business or engage in activities or operations related to the subject matter of any General Terms is withdrawn or materially altered or modified;
 - d. If the applicable Governmental Entity's duties, programs, or responsibilities are modified or materially altered; or
 - e. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the applicable Governmental Entity's ability to fulfill any of its obligations under any General Terms.
- 1.12. **"Participating Agency"** shall have the same meaning ascribed it under Iowa Code section 8B, including any subsequent amendments or successor provisions thereto.
- 1.13. **"Purchasing Instrument"** means documentation issued by a Governmental Entity to Contractor for the purchase of Deliverables, including a **"Purchase Order"** or **"Statement of Work"** executed pursuant to any General Terms, regardless of form, and which identifies the Deliverables to be purchased and any other requirements deemed necessary by the applicable Governmental Entity, such as compensation and delivery dates.
- 1.14. **"Security Breach"** means the unauthorized acquisition of or access to Customer Data by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. **"Security Breach"** shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.
- 1.15. **"Services"** include without limitation all services performed or provided by or on behalf of, or otherwise made available through, Contractor, Contractor Contractors, or Contractor Personnel, directly or indirectly, in connection with any General Terms, including any Software or System or any corresponding hosting, implementation, migration, or configuration services associated therewith or related thereto.
- 1.16. **"Software"** means any and all other software, programs, applications, modules and components, in object code form, and all related Source Code.
- 1.17. **"Source Code"** means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the 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.
- 1.18. **"System"** means any system provided or otherwise made available by or through Contractor, Contractor Contractors, or Contractor Personnel, directly or indirectly, in connection with any General Terms, including any Software, programs, or applications

associated therewith or included or incorporated therein, regardless of the method of delivery, including any Internet-enabled, Web-based or other similar delivery method.

- 1.19. **"Third Party"** means a person or entity (including, any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to any General Terms.
- 1.20. **"Contractor Contractor(s)"** means any of Contractors authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Contractor, directly or indirectly, in performing or providing Deliverables under any General Terms.
- 1.21. **"Contractor Personnel"** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Contractor or any Contractor performing or providing Deliverables under any General Terms.
2. **Term.** The initial term of any General Terms shall begin on the date of last signature, below ("**Effective Date**"), and end on the date that is one year after the Effective Date ("**Initial Term**"), unless terminated earlier in accordance with the terms of the General Terms, as amended. After expiration of the Initial Term, the applicable Governmental Entity shall have the option to extend/renew the General Terms for up to nine (9) additional one-year renewal terms (each a "**Renewal Term**"). The decision to extend or renew will be at the sole option of the applicable Governmental Entity and may be exercised by the applicable Governmental Entity by providing written notice to Contractor at least thirty (30) days prior to the end of the Initial Term and each Renewal Term. The Initial Term and any Renewal Terms are referred to herein collectively as the "**Term.**" Contractor shall provide the applicable Governmental Entity with at least ninety (90) days prior written notice of the end of the Initial Term and each Renewal Term.
3. **Scope/Applicability.** Select Governmental Entities in the State of Iowa have the authority to enter into agreements for use by other Governmental Entities. To the extent this Amendment is executed by a Governmental Entity possessing such authority, unless another Governmental Entity possesses a separate, written agreement or amendment signed by both the specific Governmental Entity and Contractor following receipt of any required approvals, to the extent permitted by applicable law, this Amendment shall supersede any General Terms that may have been or may be separately executed by any other Governmental Entity, including through any online mechanism such as a "clickthrough" or other similar mechanism.
4. **Grant of License or Use Rights.** Notwithstanding anything in any General Terms to the contrary, any license, use rights, or other similar rights granted by Contractor or Contractor Contractors, directly or indirectly, to a Governmental Entity pursuant to any General Terms shall include, and any Software, System, or other Deliverables provided by Contractor or Contractor Contractors, directly or indirectly, shall include, the following additional grant of rights:
 - 4.1. Any and all rights necessary for the applicable Governmental Entity to use, install, maintain, modify, support, enhance, copy, reproduce, or host any Software, System, or other Deliverables for the applicable Governmental Entity's business activities, including as described in the RFP or Proposal, if any;
 - 4.2. The same grant of rights to the applicable Governmental Entity's Authorized Contractors to the extent of any quantity ordered (regardless of whether on a "user," "seat," "device,"

or other similar basis) by the applicable Governmental Entity.

- 4.3. To the extent the applicable Governmental Entity intends to use, install, maintain, modify, support, enhance, or host any Software, System, or other Deliverables on a Governmental Entity's own systems or devices, the right to use, install, maintain, modify, support, enhance, or host such Software, System, or other Deliverables on any one or more of the computers, data center locations, networks, Internet or intranet sites, servers, systems, or other similar devices of any Governmental Entity or its Authorized Contractor(s).

5. Intellectual Property.

- 5.1. *Ownership and Assignment of Customer-Owned Deliverables.* This is not a work-made-for-hire agreement (as that term is defined in Section 101 of Title 17 of the United States Code) with regard to either Party. Except for express licenses granted in this Agreement, neither Party is granting nor assigning to the other Party any right, title, or interest, express or implied, in or to the Party's intellectual property. Each Party reserves all rights in such property. To the extent Vendor provides any intellectual property to the State of Iowa in connection with the Services, such intellectual property shall be deemed part of and included in the definition of "Services" hereunder and, among other things, be subject to the license granted in Section 2.
- 5.2. *Waiver.* To the extent any of Contractor's, Contractor Contractor's, or any Contractor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor, Contractor Contractors, and Contractor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the applicable Governmental Entity's rights in and to Customer-Owned Deliverables.

6. Payment. Notwithstanding anything in any General Terms to the contrary:

- 6.1. A Governmental Entity shall pay all undisputed amounts set forth in approved invoices in arrears and in conformance with Iowa Code Section 8A.514 and 11 Iowa Admin. Code 41.1(2). A Governmental Entity may pay in less than sixty (60) days, as provided in Iowa Code Section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code Section 8A.514. Notwithstanding, a Governmental Entity may, in its sole discretion, elect to prepay fees for services and deliverables in accordance with applicable laws, rules, policies, and procedures, including State of Iowa Accounting Policies and Procedures, available at: <https://das.iowa.gov/state-accounting/sae-policies-procedures-manual>.
- 6.2. In addition to the requirements of Section 6.1, if a Governmental Entity procures or makes payments for Deliverables to or from a Third Party, such as a distributor or reseller, and not from Contractor directly, any terms or conditions regarding pricing, payment, and/or interest shall be void, and payment to such Third Party shall relieve the Governmental Entity of any obligation, responsibility, or liability related to the payment of any fees or payments due or owed for such Deliverables.

7. Termination for Non-Appropriation. Notwithstanding anything in any General Terms to the contrary, and in addition to any other termination provision(s) set forth therein, in the event of a

Non-Appropriation Event, the applicable Governmental Entity may terminate any General Terms without advance notice and without penalty or liability. In the event of such termination, any further obligation owed to Contractor by the applicable Governmental Entity shall be limited by, and subject to, legally available funds. Notwithstanding anything in any General Terms to the contrary, nothing in this Amendment or any General Terms shall be construed to waive any clause regarding the availability or appropriation of funds.

8. **Compliance with Law.** Contractor represents, warrants, covenants, and promises that Contractor, Contractor Contractors, and Contractor Personnel have complied with, and shall continue to comply with, and, to the extent applicable, the Deliverables will 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 any General Terms, including the following:
 - 8.1. 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 the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the applicable Governmental Entity's or its designee's written request, Contractor shall submit a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
 - 8.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
 - 8.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under any General Terms.
 - 8.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
 - 8.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.0, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
 - 8.6. All applicable I.T. Governance Document(s).
 - 8.7. 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 applicable federal requirements, including those found at 2 CFR 200.

The Contractor shall take such steps as necessary to ensure Contractor Contractors and Contractor Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Amendment or any General Terms to the contrary, Contractor, Contractor Contractors, and Contractor Personnel's failure to fulfill any requirement set forth in this Section shall be regarded as a material breach and the applicable Governmental Entity may cancel, terminate, or suspend, in whole or in part any General Terms, in whole or in part. In addition, Contractor may be declared ineligible for future State contracts in accordance with authorized procedures or Contractor may be subject to other sanctions as provided by law or rule.

9. Confidential Information.

9.1. Contractor's Treatment of Confidential Information.

9.1.1. *Limited Access.* Customer Data shall at all times remain the property of the applicable Governmental Entity, and the applicable Governmental Entity shall retain exclusive rights thereto and ownership thereof. Contractor, Contractor Contractors, and Contractor Personnel may have access to Customer Data solely to the extent necessary to carry out their duties under any General Terms. Contractor, Contractor Contractors, or Contractor Personnel shall presume all Customer Data is considered confidential, hold all Customer Data in the strictest confidence, and use and permit use of Customer Data solely for the purposes of providing Deliverables under any General Terms, subject to any restrictions set forth herein or in any state and federal laws, rules, regulations, standards, and orders applicable either during the Term or thereafter. Contractor, Contractor Contractors, and Contractor Personnel shall not gather, store, log, archive, use, or otherwise retain Customer Data in any manner other than as expressly authorized by any General Terms, and will not disclose, distribute, sell, commercially or politically exploit, share, rent, assign, lease, or otherwise transfer or disseminate Customer Data to any Third Party, except as expressly permitted hereunder or as Contractor may be expressly directed in advance in writing by the applicable Governmental Entity. Contractor, Contractor Contractors, and Contractor Personnel shall not remove from any Governmental Entity's facilities or retain a copy of any Customer Data unless such removal or retention is necessary to provide or perform Deliverables, to fulfill their obligations under any General Terms, or as otherwise approved in writing by the applicable Governmental Entity. The Contractor will immediately report the unauthorized disclosure of Customer Data to the applicable Governmental Entity.

9.1.2. *Destruction or Return of Customer Data.* On the applicable Governmental Entity's written request or upon expiration or termination of any General Terms for any reason, Contractor will promptly:

9.1.2.1. After providing notice to the applicable Governmental Entity and subject to its prior written approval, return or destroy, at the applicable Governmental Entity's option, all Customer Data; and

9.1.2.2. Provide a notarized written statement to the applicable Governmental Entity certifying all Customer Data has been returned or destroyed to the Governmental Entity, whichever is applicable.

To the extent Contractor is required to destroy Customer Data pursuant to this Section, Customer Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology ("NIST")-approved methods.

9.1.3. *Compelled Disclosures.* To the extent required by applicable law or by lawful order or requirement of a court or governmental authority of competent jurisdiction over Contractor, Contractor may disclose Customer Data to a Third

Party in accordance with such law, order, or requirement, subject to the following conditions:

- 9.1.3.1.** As soon as becoming aware of such law, order, or requirement, and no less than five (5) business days prior to disclosing Customer Data pursuant thereto, Contractor will notify the applicable Governmental Entity in writing, specifying the nature of and circumstances surrounding the contemplated disclosure, and forward any applicable process, including a subpoena, to the appropriate Governmental Entity for its review.
- 9.1.3.2.** Contractor will consult with the applicable Governmental Entity on the advisability of taking legally-available steps to resist or narrow any required response or disclosure.
- 9.1.3.3.** Contractor will use best efforts not to release Customer Data pending the outcome of any measures taken by the applicable Governmental Entity to contest, oppose, or otherwise seek to limit such disclosure by Contractor or any Third Party ultimately obtaining such Customer Data. The Contractor will cooperate with and provide assistance to the applicable Governmental Entity regarding such measures.
- 9.1.3.4.** Solely the extent Contractor is required to disclose Customer Data to a Third Party, Contractor will furnish only such portion of Customer Data as it is required to disclose and will exercise best efforts to obtain an order or other reliable assurances that Customer Data will be held in confidence by any Third Party to which it is disclosed.
- 9.1.3.5.** Notwithstanding any such compelled disclosure by Contractor, such compelled disclosure will not otherwise affect Contractor's obligations hereunder with respect to Customer Data so disclosed.

9.2. Treatment of Contractor's Confidential Information.

- 9.2.1.** *Safeguarding Obligation.* Except as otherwise provided or contemplated herein, and subject to applicable state, federal, and/or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), Governmental Entities shall not intentionally disclose Contractor's Confidential Information to a Third Party (excluding other Governmental Entities and Authorized Contractors) without the prior written consent of Contractor.
- 9.2.2.** *Destruction or Return of Contractor's Confidential Information.* On termination or expiration of any General Terms, the applicable Governmental Entity shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at Contractor's option, all of Contractor's Confidential Information (excluding items subject to any continuing licenses inuring to the benefit of the applicable Governmental Entity hereunder or that are required for use of any Deliverables).

9.2.3. Compelled Disclosures. Notwithstanding and in addition to the foregoing, Governmental Entities may disclose Contractor's Confidential Information:

- 9.2.3.1.** 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;
- 9.2.3.2.** Pursuant to any applicable laws, rules, or regulations;
- 9.2.3.3.** If the applicable Governmental Entity reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
- 9.2.3.4.** If the applicable Governmental Entity, in the Governmental Entity's sole discretion, determines Contractor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity 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 Contractor's Confidential Information as permitted above, a Governmental Entity shall provide reasonable notice to Contractor of the circumstances giving rise to such disclosure. In addition, Contractor agrees to indemnify and hold harmless any Governmental Entity and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever (including the reasonable value of time of the Attorney General's Office and the costs, expenses, and attorney fees of other counsel retained by or on behalf of the Governmental Entity) arising out of, resulting from, or in any way related to any judgments or damages awarded against any Governmental Entity in favor of the party requesting any of Contractor's Confidential Information.

- 9.3. Open Records and Electronic Discovery Requests and Records Retention.** Contractor will, upon the applicable Governmental Entity's request and within any time period specified by the applicable Governmental Entity, take all actions requested by the Governmental Entity 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 Governmental Entity to produce or provide Customer Data or other data or information to a Third Party. Contractor will produce and provide all Customer Data or other data or information within the time period set forth in the Governmental Entity's request. Contractor will take all steps 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, Contractor will, upon the applicable Governmental Entity's request, take all actions requested by the Governmental Entity to assist it in complying with any federal, state, or local record retention requirements, policies, procedures, or other requirements.

- 9.4. Ancillary Agreements and Non-Disclosure Agreements. Contractor or Contractor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to an applicable Governmental Entity making purchases hereunder, such as a Business Associate Agreement (“BAA”) or Criminal Justice Information System (“CJIS”) Security Addendum, or any other non-disclosure or confidentiality agreements in connection with any General Terms deemed necessary by the applicable Governmental Entity (“Ancillary Agreement(s)”).
- 9.5. 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, including any Governmental Entity, will be entitled to 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 will constitute a material breach of this Agreement and be grounds for immediate termination of any General Terms in the exclusive discretion of the non-breaching Party.
- 9.6. Survives Termination. Contractor’s duties 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 Contractor’s, Contractor Contractor’s, or Contractor Personnel’s performance of this Agreement regardless of the date any potential claim is made or discovered by a Governmental Entity.
10. **Security Breach Notification.** Contractor shall immediately inform the Participating Agency or OCIO, of any Security Breach or incident. It is within OCIO or the Participating Agency’s discretion to determine whether a particular incident is a security incident or a Security Breach. Contractor shall promptly report a Security Breach or incident to OCIO and the Participating Agency when the breach affects the security of Customer Data.
11. **Security Breach Responsibilities.** Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Security Breach. In the event of a Security Breach or other event requiring notification in accordance with applicable law, Contractor shall: (a) share information relevant to the Security Breach with OCIO and the Participating Agency; (b) promptly implement necessary remedial measures; and (c) document responsive action related to the Security Breach. If the Security Breach requires public notice, all communication must be coordinated with OCIO and the Participating Agency. Contractor is responsible for all notification and remedial costs and damages.
12. **Use of Third Parties.** None of the Deliverables to be provided by Contractor pursuant to any General Terms shall be subcontracted or delegated to any Third Party, including Contractor Contractors, without the prior written consent of the applicable Governmental Entity. Such consent shall not be deemed in any way to provide for the incurrence of any additional obligation of a Governmental Entity, whether financial or otherwise. Any subcontract to which a Governmental Entity 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 applicable Governmental Entity may deem

necessary. Contractor is solely liable for any and all payments that may be due to Contractor Contractors pursuant to any subcontract. Contractor shall indemnify and hold harmless any Governmental Entity and their officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Contractor's breach of any subcontract into which it enters, including Contractor's failure to pay any and all amounts due to any Contractor Contractors. In addition, any Governmental Entity is not responsible for any failure of any Contractor Contractors to pay any amounts that may be due Contractor, and Contractor may not refuse to perform its obligations under this Agreement for any such failure. If Contractor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to Contractor or any subcontractor by any person in connection with Deliverables performed or provided under any General Terms, the applicable Governmental Entity may pay such claim and charge the amount of the payment against funds due or to become due Contractor under any General Terms. The payment of a claim in such manner shall not relieve Contractor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow Governmental Entities making purchases hereunder to access the subcontractor's books, documents, and records and for inspections of work, as required of Contractor herein. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision, or liability under this Agreement. The Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Contractor Contractors. Any action of Contractor Contractors, which, if done by Contractor, would constitute a breach of this Agreement, shall be deemed a breach by Contractor and have the same legal effect. The term "**Contractor**" as used in this Agreement shall, unless the context clearly requires to the contrary, be deemed to include Contractor Contractors and Contractor Personnel.

13. **Conflicts of Interest.** Contractor represents, warrants, and covenants that no relationship exists or will exist during the Term between Contractor, Contractor Contractors, or Contractor Personnel and any Governmental Entities that are or may constitute a conflict of interest or appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to any General Terms, and Contractor, Contractor Contractors, and Contractor Personnel shall not engage in any conduct or permit any Third Party from engaging in any conduct that would violate that chapter.
14. **Limitation of Liability.** If the Terms contain any provision(s) limiting Contractor's liability or providing for sole and exclusive remedies, any such provision(s) shall be superseded by or subject to the following, as applicable: Notwithstanding anything in this Amendment or any General Terms to the contrary, and solely to the extent permitted by applicable laws, rules and regulations: (a) the maximum liability of either Party under this Agreement for direct damages shall be one times the Contract Value ("**Contract Value**" is defined as the aggregate total compensation to be paid by a Governmental Entity under the entire term of the Agreement, including all renewals and extensions); provided, however, under no circumstances shall the foregoing limitation or any other provision in this amendment or any General Terms that either limits Contractor's liability or provides for sole or exclusive remedies apply to any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:
 - 14.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;

- 14.2. Death, bodily injury, or damage to real or personal property;
 - 14.3. Any contractual obligations of Contractor pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws; confidential information; and/or Security Breach;
 - 14.4. Claims arising under this Agreement calling for indemnification of the State or for third-party claims against the State for bodily injury to persons or for damage to real or tangible personal property caused by Contractor's negligence or willful conduct.
15. **Indemnification.**
- 15.1. Governmental Entities to Contractor. Notwithstanding anything in this Amendment or any General Terms to the contrary, Governmental Entities shall under no circumstances have any obligation to defend or indemnify Contractor or its subcontractors, agents, or other third parties acting on its behalf for any reason.
 - 15.2. Contractor to Governmental Entities. Notwithstanding anything in this Amendment or any General Terms to the contrary, any obligation of Contractor to defend any Governmental Entity in any General Terms shall be replaced and superseded with an obligation to indemnify and hold harmless the applicable Governmental Entity and their employees, officers, board members, agents, representatives, and officials.
16. **Records Retention and Access.** Contractor shall maintain books, documents and records that sufficiently and properly document Contractor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Contractor shall permit any Governmental Entity or its designee, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Contractor relating directly or indirectly to Contractor's performance under any General Terms. Contractor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Contractor shall require Contractor Contractors to agree to the same provisions of this section.
17. **Reservation of Immunity.** Notwithstanding anything in any General Terms to the contrary, nothing in this Amendment or any General Terms shall be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to any Governmental Entity, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise.

18. **Choice of Law and Forum.** All General Terms shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with any General Terms, including after expiration or termination of the same, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Contractor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of any General Terms shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non-convenient or otherwise. Contractor irrevocably consents to service of process by certified or registered mail addressed to Contractor's designated agent. Contractor appoints MARTIN ATTERBURY as its agent to receive service of process. If for any reason Contractor's agent for service is unable to act as such or the address of the agent changes, Contractor shall immediately appoint a new agent and provide applicable Governmental Entities with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the applicable Governmental Entity. Nothing in this provision will alter the right of any Governmental Entity to serve process in any other manner permitted by law. This Section shall survive termination of this Agreement.
19. **RFP and Contractor's Proposal.** To the extent applicable, the Request for Proposal RFP1722131001 ("RFP") and Contractor's proposal dated February 21, 2022, in response to the RFP ("Proposal"), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into any General Terms by this reference as if fully set forth therein; provided, however, that none of the Contractor's exceptions, objections or proposed modifications respecting the RFP or any terms associated therewith (collectively "**Contractor Exceptions**") shall be incorporated therein unless expressly set forth herein. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Contractor, except that any Contractor Exceptions shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of the Parties, unless expressly stated herein. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal (excluding any Contractor Exceptions that are not expressly made a part of this Agreement). The references to the Parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Contractor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered or stated in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the applicable Governmental Entity shall have only those

obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the State.

20. **Independent Contractor.** The Contractor is an independent contractor providing Deliverables to Governmental Entities.
21. **Not a Joint Venture.** Nothing in any General Terms shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party.
22. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to any General Terms.
23. **Severability.** If any provision of this Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Amendment.
24. **Captions and Terms.** Unless the context otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation."
25. **Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in this Agreement, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled. Any terms in any General Terms to the contrary, establishing a sole and exclusive remedy, are null and void.
26. **Multiple Counterparts.** This Amendment may be executed in several counterparts, all of which when taken together shall amend all General Terms, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.