

**IOWA DEPARTMENT OF NATURAL RESOURCES
CONTRACT NUMBER *Contract Number***

Between

**IOWA DEPARTMENT OF NATURAL RESOURCES
And
*CONTRACTOR NAME***

(Include Commission approval date information only if (1) this Contract is required to be approved by a Commission because the Contract amount is over \$25,000 or (2) Commission approval is otherwise required by law.)

This Contract was approved by the *Environmental Protection Commission/Natural Resource Commission* on *Commission Approval Date*.

IN WITNESS THEREOF, the parties hereto have entered into this Contract on the day and year last specified below.

DEPARTMENT OF NATURAL RESOURCES

By: _____ Date: _____

Department Signatory, Title (Please consult Signature Policy to determine which name and title should appear here.)

CONTRACTOR

By: _____ Date: _____

*Contractor Name
Contractor Signatory, Title*

This Contract shall not begin until it has been either (1) signed by both parties, or (2) the Contract start date has occurred, whichever is later.

For DNR use only:

1. Retain the original contract in the project file and send a hardcopy with 1st invoice to Budget and Finance.
2. a) Email scanned copy to christina.iamis@dnr.iowa.gov OR b) Fax copy to 515-725-8201 (Attn: Christina Iams)

If you do not have faxing or scanning/emailing capabilities, you may mail a copy of the contract to IA DNR, Wallace State Office Building, Attention: Christina Iams, 502 East 9th Street, Des Moines, IA 50319.

SPECIAL CONDITIONS

This Contract is entered into between the Iowa Department of Natural Resources (DNR) and [Contractor Name](#) (Contractor). The parties agree as follows:

Section 1 **IDENTITY OF THE PARTIES**

1.1 Parties. DNR is authorized to enter into this Contract. DNR's address is: Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.

[Contractor](#), a [Contractor Legal Entity Type](#) is organized under the laws of the State of [State of Organization](#) and is registered with the Iowa Secretary of State. The Contractor's address is: [Contractor Address](#).

1.2 Project Managers. Each party has designated a Project Manager, who shall be responsible for oversight and negotiation of any contract modifications, as follows:

DNR Project Manager: [DNR Project Manager Name](#), [DNR Project Manager Title](#)
[DNR Project Manager Bureau or Division](#)
[DNR Project Manager Address](#)
[City, Iowa ZIP](#)
Phone: [DNR Project Manager Phone](#)
Fax: [DNR Project Manager Fax](#)
Email: [DNR Project Manager Email](#)

Contractor Project Manager: [Contractor Project Manager Name](#), [Contractor Project Manager Title](#)
[Contractor Project Manager Address](#)
[City, State ZIP](#)
Phone: [Contractor Project Manager Phone](#)
Fax: [Contractor Project Manager Fax](#)
Email: [Contractor Project Manager Email](#)

Section 2 **STATEMENT OF PURPOSE**

2.1 Purpose. (This section should contain an explanation of why DNR is entering into this Contract. It should be a brief summary of what the Statement of Work will accomplish.)

2.2 Background. (This section is optional. If included, it should contain an explanation of the background of the project and how the project fits into DNR's mission. It does not have to be long.)

Section 3 **DURATION OF CONTRACT**

3.1 Term of Contract. The term of this Contract shall be [Contract Start Date](#) through [Contract Expiration Date](#), unless terminated earlier in accordance with the Termination section of this Contract. However, this Contract shall not begin until it has been signed by both parties.

3.2 Approval of Contract. If the amount of compensation to be paid by DNR according to the terms of this Contract is greater than \$25,000.00, or if commission approval is required by statute or rule, then performance shall not commence unless by [Contract Start Date](#) this Contract has been approved by the [Environmental Protection Commission/Natural Resource Commission](#).

3.3 Amendments. This Contract may be amended only by written mutual consent of the parties. For competitively bid contracts, DNR shall have the sole option to amend this Contract for subsequent periods,

adding up to no more than six years total from the beginning date of the Original Contract, by executing a signed amendment prior to the expiration of this Contract.

Section 4 DEFINITIONS

4.1 Definitions. This Contract shall include the following definitions:

“Agency” shall mean Department of Natural Resources (DNR).

“Contract” shall mean these Special Conditions, any Attachments or Exhibits attached to and included as part of these Special Conditions, the DAS General Terms and Conditions for Services, the RFP and associated documents, and the RFP response documents of the awarded Contractor.

“Contract Declarations & Execution Page” shall mean these Special Conditions.

“DAS General Terms and Conditions” shall mean the DAS General Terms and Conditions for Services dated May 1, 2016, and found at <https://das.iowa.gov/procurement/terms-and-conditions>.

“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. Deliverables shall include the following:

1. **Services Defined.** In connection with this Contract, Contractor shall provide DNR, and, to the extent applicable, Users, access to and use of the Application Services and perform and provide the Services, all as more particularly described herein.
2. **Application Services.** Subject to the terms and conditions of this Contract, Contractor grants to the DNR and the State of Iowa, for the State of Iowa’s business activities, including without limitation the provision of information and services to DNR Customers, during the Term a non-exclusive license to: (i) access, use and, to the extent applicable, maintain and support, the Application Services; and (ii) access, use, reproduce and distribute Documentation.
3. **Software.** To the extent Contractor provides or delivers any software to DNR in connection with this Contract for installation on the State of Iowa servers or personal computers or laptops, DNR shall have a non-exclusive license to use, maintain, modify, copy, distribute and support the software solely in connection with its use of the Services as contemplated hereunder. DNR shall not disassemble, decompile, or reverse engineer the software or remove any proprietary notices thereon. The software shall be deemed part of and included in the definition of the Services.
4. **Third Party Intellectual Property.** Any Third Party Intellectual Property shall be deemed part of and included in the definition of “Services” and subject to all terms and conditions of this Contract relating to the Services. DNR shall not be bound by any terms and conditions relating to the Third Party Intellectual Property unless such terms and conditions are expressly identified by Contractor and agreed to by DNR in writing.
5. **Contractor Personnel.** Should DNR be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Contractor Personnel assigned by Contractor to perform Personal Services, DNR may request the replacement of such Contractor Personnel. The replacement request shall be in writing and upon receipt of the request, Contractor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. In the event Contractor should ever need to remove any Contractor Personnel from performing the Personal Services under this Contract, Contractor shall provide DNR with adequate notice, except in circumstances in which such notice is not possible, and shall work with DNR on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Such transitioning to replacement Contractor Personnel shall be at no additional cost to DNR. Contractor agrees that all Contractor Personnel assigned to perform

Personal Services must have experience performing the tasks to which they will be assigned under this Contract. In the event that, as a result of the actions, inaction, or replacement of Contractor Personnel, additional or accelerated work is required to perform this Contract, Contractor shall perform all such work at no additional charge to DNR.

6. Import and Export of Data. DNR shall have the ability to import or export data and information in whole or in part from the System at its discretion, at no charge to DNR, and in such formats as may be acceptable to DNR, without interference from Contractor. This includes the ability for DNR to import or export such information and data to/from other contractors. In the event DNR is unable to successfully import or export data and information in whole or in part from the System, Contractor shall assist DNR in doing so at DNR’s request, at no charge to DNR; as it relates to the export of such data and information, Contractor shall provide to or ensure DNR has obtained an export of the requested data and information within one day of any request in the format specified by DNR.

“RFP” shall mean the formal and informal Request for Proposals, or Request for Quotes, that was issued to solicit the Deliverables that are subject to the Contract including these Special Conditions.

“Special Contract Attachments” shall mean any Attachments or Exhibits attached to and included as part of these Special Conditions.

“Special Conditions” and “Special Terms” shall mean this document, including but not limited to the Statement of Work, compensation or contract payment terms, and any amendments thereto. If there is a conflict between these Special Conditions and the DAS General Terms and Conditions for Services, the provisions of these Special Conditions shall prevail.

“Task Milestone Date” shall mean a deadline for accomplishing a Task required by this Contract.

Section 5 STATEMENT OF WORK

5.1 Statement of Work. Contractor shall perform the following tasks. Contractor shall complete its obligations under this Contract by the Task Milestone Dates set out in the following table:

Obligation	Task Milestone Date
<p>Task 1: Kick Off Meeting Description: Contractor shall schedule and attend a Kick Off meeting with DNR. At the Kick Off Meeting, Contractor shall present to DNR any changes to the proposed schedule contained in the Contractor’s Proposal dated (date).</p>	<p>No later than five days following the date this Contract is signed by both parties</p>
<p>Task 2: Refined Statement of Work and Schedule Description: Contractor shall submit to DNR a Refined Proposed Statement of Work, taking into account any changes in the Contractor’s proposed schedule agreed upon with DNR during the Kick Off meeting, and any other changes or further details proposed by Contractor from Contractor’s Proposal dated (date). The parties shall proceed according to the provisions contained in Sections 5.1.2 through 5.1.5 below, before Contractor proceeds to Task 3.</p>	<p>No later than two weeks from the date of the Kick Off Meeting</p>
<p>Task 3: Task Name... Description: Description...(Add additional Tasks as needed)</p>	<p>No later than Task Due Date</p>

5.1.2. Review of Proposed Statement of Work. Following submission of the Refined Proposed Statement of Work required by Task 2, DNR shall review the Refined Proposed Statement of Work and the parties shall communicate in an attempt to reach agreement regarding the contents of the Refined Proposed Statement of Work.

5.1.3. Failure to Reach Agreement Regarding Statement of Work. In the event DNR determines that the parties cannot reach agreement regarding the contents of the Refined Proposed Statement of Work, then DNR shall have the continuing right, in its sole discretion, to terminate this Contract without providing Contractor with any further or additional notice or opportunity to cure, notwithstanding the termination provisions of this Contract.

5.1.4. Incorporation of Proposed Statement of Work. Following acceptance by DNR of the Refined Proposed Statement of Work, the Refined Proposed Statement of Work shall be incorporated into this Contract by reference as if set out herein. A copy of the Refined Proposed Statement of Work shall be attached to this Contract.

5.1.5. Implementation of Proposed Statement of Work. Upon acceptance by DNR of the Refined Proposed Statement of Work, the development and implementation of the Refined Proposed Statement of Work shall proceed promptly and in accordance with the terms of this Contract.

5.2 Stop Services. In addition to its other remedies described herein, DNR shall have the right at any time during the Contract term to direct the services of Contractor fully or partially suspended or stopped, if the Deliverables fail to conform to applicable specifications and requirements in this Contract. DNR shall give Contractor written notice of a stop work directive. DNR shall provide to Contractor the reasons for the stop work directive.

5.3 Industry Standards. Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the relevant industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

5.4 Documentation and Additional Warranty Obligations. The Statement of Work shall be completed consistent with the following:

5.4.1 Documentation. At no additional charge to DNR, Contractor shall provide DNR with all Documentation relating to the any Deliverables required by this Contract, including all Attachments. If the Documentation is revised or supplemented at any time, Contractor shall promptly deliver a copy of such revised or supplemental Documentation to DNR, at no additional cost. DNR may, at any time, reproduce copies of all Documentation and other materials provided by Contractor, distribute such copies to DNR, and incorporate such copies into its own technical manuals, provided that all copyright and trademark notices, if any, are reproduced thereon. To the maximum extent available, Contractor shall deliver the Documentation in electronic form to DNR, unless otherwise requested by DNR.

5.4.2 Corrections. In addition to any warranty obligations of Contractor under this Contract, Contractor shall promptly correct any error or any failure of the services or deliverables to perform in accordance with the this Contract, including without limitation, defect repair, programming corrections, and remedial

programming, and provide such services and repairs required to ensure that the services and deliverables operate properly and conform to the Contract requirements on an ongoing basis during the term of this Contract.

Section 6 MONITORING AND REVIEW

6.1 Task Milestone Dates. Contractor shall complete its obligations under this Contract by the Task Milestone Dates set out in Section 5.1.

Failure by Contractor to complete the above-designated portions of its obligations by the Task Milestone Dates set out herein shall constitute material breach of this Contract by Contractor and shall be grounds for DNR to immediately terminate this Contract for cause.

6.2 Review Meetings. Commencing with beginning performance of this Contract, the Project Managers shall meet [weekly/monthly/quarterly/another interval](#) to discuss progress made by the Contractor during the performance of this Contract. The meetings shall occur, either in person or by telephone or video conference call, at the following times: [Meeting Day \(Example: every second Monday\)](#) at [Meeting Time \(Example: 3:00 to 4:00 pm\)](#). Meetings may be postponed only on a case-by-case basis by mutual written agreement of the parties.

6.3 Status Reports. At least one week prior to each scheduled review meeting, the Contractor Project Manager shall provide the DNR with a status report listing:

- Accomplishments during the previous period,
- Activities planned for the upcoming period,
- Tasks completed or Deliverables produced during the previous period,
- An updated schedule of upcoming Deliverables,
- Any problems or concerns encountered since the last meeting, and
- An explanation of any deviations from the financial and hourly expenditures contained in the Contractor's Proposal, if applicable.

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 shall facilitate problem resolution.

6.4 DNR right to review and observe. DNR shall have the right to review and observe, at any time, completed work or work in progress. Contractor shall allow the State of Iowa or DNR, without cost, to inspect its facilities and books and records relating to invoicing and time records for the purpose of monitoring and evaluating performance of this Contract.

Section 7 COMPENSATION

7.1 Source of Funding. The authority to enter into this Contract is [Statutory Authority \(where is the authority to spend the money coming from\)](#). The source of funding for this Contract is [\(where is the money to spend coming from? Is it a federal grant, from the General Fund? Please include the cost center\)](#).

7.2 Reserved. [\(DNR will pay Contractor on a per privilege basis. Further development will occur between DNR and the chosen Contractor.\)](#)

7.3 Invoices. Any invoices shall contain the DNR Contract Number found on the first page of these Special Conditions. Each invoice shall itemize the work performed pursuant to the Contract, and shall specify the amount of payment requested for each Task during the period covered by the invoice. Each invoice shall comply with all applicable rules concerning payment of such claims and shall contain appropriate documentation

necessary to support the fees or charges included in the invoice. DNR shall have the right to dispute any invoice item submitted for payment and to withhold payment of any disputed amount if DNR reasonably believes the invoice is inaccurate or incorrect in any way. Original invoices, which shall include the DNR contract number in a prominent place, shall be submitted to:

Iowa Department of Natural Resources
Attention: [DNR Project Manager](#)
[DNR Project Manager Address](#)
City, Iowa ZIP

7.4 Payment of Invoices. DNR shall pay approved invoices in arrears and in conformance with Iowa Code section 8A.514. Unless otherwise agreed to in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any services provided by or on behalf of the Contractor under this Contract. Payment will be issued to:

[Contractor Name](#)
Attention: [Contractor Project Manager Name](#)
[Contractor Address](#)
City, State ZIP

7.5 No advance payment. No advance payments shall be made for any Deliverables provided by Contractor pursuant to this Contract.

7.6 Delay of Payment Due to Contractor's Failure. If DNR determines that the Contractor has failed to perform or deliver any Deliverable required by this Contract, then the Contractor shall not be entitled to any compensation or any further compensation if compensation has already occurred, under this Contract until such Deliverable is performed or delivered. DNR shall withhold that portion of the invoice amount which represents payment for the Deliverable that was not completed, delivered and successfully deployed.

7.7 Withholding Payments. In addition to pursuing any other remedy provided herein or by law, DNR may withhold compensation or payments to Contractor, in whole or in part, without penalty to DNR or work stoppage by Contractor, in the event DNR determines that (1) Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or (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.

7.8 Erroneous Payments and Credits. Contractor shall promptly re-pay or refund to DNR the full amount of any overpayment or erroneous payment within ten business days after either discovery by Contractor or notification by DNR of the overpayment or erroneous payment.

7.9 Set-off Against Sums Owed by Contractor. In the event that Contractor owes DNR or the State any sum (including any State taxes in arrears) under the terms of this Contract, any other contract, pursuant to a judgment, or pursuant to any law, DNR may set off such sum against any sum invoiced to DNR by Contractor. This may be done in DNR's sole discretion unless otherwise required by law.

7.10 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Contract separate from the compensation referred to in this section, unless agreed to by both parties in an amendment to this Contract executed by both parties. Unless otherwise specifically provided for in this Contract, Contractor shall be solely responsible for all its costs and expenses, including travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other

costs and expenses of the Contractor. This language supersedes the DAS General Terms and Conditions for Services language regarding reimbursement of expenses.

Section 8 INSURANCE

8.1 Insurance. Contractor shall obtain insurance as identified in the DAS General Terms and Conditions for Services. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the DNR. The certificates shall be subject to approval by the DNR. All insurance policies required by this Contract shall: (a) remain in full force and effect for the entire term of the Contract; and (b) not be reduced, changed to the detriment of DNR or canceled without being simultaneously replaced by another policy meeting the requirements of this Contract. Approval of the insurance certificates by the DNR shall not relieve the Contractor of any obligation under this Contract.

Section 9 FEDERAL FUNDING CONDITIONS

9.1 The Contractor shall comply with all applicable federal requirements, including but not limited to 2 CFR Chapter I, Chapter II, Part 200, et al. (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule).

[\(If there are specific requirements for the use of the federal funds related to this Contract – they should be stated here.\)](#)

Section 10 USE OF THIRD PARTIES AND SUBCONTRACTORS

10.1 The Contractor may not contract with third parties for the performance of any of the Contractor's obligations under this Contract, unless and then only to the extent specified below:
[\(Specify subcontracting allowance and requirements as applicable\).](#)

10.2 The following conditions shall apply when contracting with third parties for the performance of any obligations under this Contract:

10.2.1 All subcontracts shall be subject to prior approval by the DNR. The DNR's consent shall not be deemed in any way to provide for the incurrence of any obligation of DNR in addition to the remuneration agreed upon in this Contract. Any subcontract to which DNR has consented shall be in writing and shall in no way alter the terms and conditions of this Contract.

10.2.2 The Contractor may enter into subcontracts to complete the work required by this Contract provided that the Contractor remains responsible for all services performed under this Contract. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision, or liability under this Contract. The Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any subcontractor.

10.2.3 All restrictions, obligations and responsibilities of the Contractor under this Contract also shall apply to the subcontractors.

10.2.4 DNR shall have the right to request the removal of a subcontractor from the Contract for good cause. The Contractor shall indemnify, defend and hold harmless DNR and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's breach of any subcontract in which it enters, including Contractor's failure to pay any and all amounts due by Contractor to any subcontractor.

10.2.5 Each subcontract shall contain provisions for DNR access to the subcontractor's books, documents, and records and for inspections of work, as required of Contractor herein.

10.2.6 Any action of a subcontractor, which, if done by Contractor, would constitute a breach of this Contract, shall be deemed a breach by Contractor and have the same legal effect.

10.2.7 If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from

circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default.

10.2.8 If the Contract is subject to the provisions of Iowa Code chapter 8F, then the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontract Contractor enters into pursuant to this Contract. Any compliance documentation, including but not limited to certification, received from any subcontractor shall be forwarded to DNR immediately

Section 11 GENERAL TERMS AND CONDITIONS

11.1 DAS General Terms and Conditions. Except as otherwise stated in these Special Conditions, the General Terms and Conditions for this Contract shall be the DAS General Terms and Conditions for Services (attached as, "Contracts-Services-State General T&Cs-eff 5-1-16"), which are dated May 1, 2016, and may be found within the Bid Opportunity web site page for this specific RFP at <https://bidopportunities.iowa.gov/>.

In addition to any other exceptions to or supersession of the DAS General Terms and Conditions for Services contained in these Special Conditions, the following portions of the DAS General Terms and Conditions for Services are excluded from this Contract:

- 1.11 (Legislative Changes);
- 1.12 (Intellectual Property); and
- 1.15.32 (Delays or Impossibility of Performance).

Section 12 CONFLICT BETWEEN SPECIAL AND GENERAL CONDITIONS

12.1 If there is a conflict between these Special Conditions and the DAS General Terms and Conditions for Services, these Special Conditions shall prevail.

Section 13 CONTRACTOR COOPERATION AND TRANSITION SERVICES

Contractor Cooperation and Transition Services. Contractor agrees that in connection with any termination or expiration of this Contract, Contractor shall continue to perform such services under this Contract as DNR may request for a transition period up to 365 days from the effective date of termination or expiration of this Contract. As part of DNR's request, DNR will inform the Contractor of the number of days during which the Contractor shall continue to host and provide access to the ELSI 3 System, and perform transition and other related services under this Section. During the Transition Period, Contractor shall take all actions necessary or requested by DNR to accomplish a complete and timely transition, including but not limited to a full migration of all DNR data from the Contractor to DNR and/or to any Authorized Contractor hired or utilized by DNR to provide any replacement or similar services related to the ELSI 3 System. Contractor shall use its best efforts to cooperate with DNR and any New Contractor, and to fully comply with all requests of DNR to effect a smooth and timely transition and to ensure there is no interruption of any Services, information or transactions provided or conducted through the ELSI 3 System. Contractor shall perform all transition services in good faith and in a professional and businesslike manner, and shall comply with all requests of DNR and any New Contractor to assist in the effort to accomplish a successful, seamless and unhindered transition of the ELSI 3 System, migration of all DNR data, and transfer of Contractor's responsibilities under this Contract. Contractor shall perform all transition services on an expedited basis, as determined by DNR. At DNR's request, Contractor shall, subject to the terms of any third-party contracts, procure for DNR any third-party authorizations or licenses necessary to grant DNR and any New Contractor the use and benefit of any contracts between Contractor and third parties and any Third Party Intellectual Property. During the Transition Period, DNR agrees to pay to Contractor any fees to which Contractor would be entitled under this Contract for services performed during such period; provided this Contract was not terminated pursuant to DAS General Terms and Conditions Section 1.6.1 (Immediate Termination by the State), Section 1.6.2 (Termination for Cause by the Agency) or Section 1.6.

4 (Termination Due to Lack of Funds or Change in Law), and Contractor continues to be in full compliance with all terms, conditions, provisions and requirements of this Contract. In the event DNR's request for transition assistance does not require Contractor to continue providing all of the services under this Contract or a particular Statement of Work, the parties shall negotiate in good faith an equitable adjustment in the fees which are otherwise payable to Contractor for such services.

Section 14 NO PUBLICITY

During the Term of this Contract and at all times after the termination or expiration of this Contract, Contractor shall not make any media release or other public announcement relating to or referring to this Contract without DNR's prior written consent. Contractor shall acquire no right to use, and shall not use, without DNR's prior written consent, the terms or existence of this Contract, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of DNR or the State of Iowa or any Governmental Entity, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; (b) to express or to imply any endorsement of Contractor or Contractor's services by DNR or the State of Iowa; or (c) in any manner other than expressly in accordance with this Contract.

Section 15 SECURITY

Compliance. Contractor and Contractor's subcontractors shall comply with state and federal data security and privacy statutes, regulations, rules, and other laws relating to data security and privacy. Contractor further represents, warrants, and covenants that Contractor and its personnel and subcontractors will ensure that the services and deliverables shall at all times comply with all applicable state and federal IT standards, policies and guidelines, including, but not limited to those relating to security, internet and the web, data backup, and applicable standards and controls.

The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by DNR.

Upon DNR's request, Contractor shall also provide DNR with a copy of a system security plan (SSP), or other comparable report, for inspection by DNR and the State of Iowa. DNR and the State of Iowa shall bear any and all costs incurred in connection with its inspection of the SSP. DNR and the State of Iowa may, in its sole discretion, utilize a third-party contractor to inspect the SSP; provided, however, that DNR and the State of Iowa shall be responsible for all costs associated with such inspection. The inspection of the SSP shall be completed according to mutually agreeable terms and timelines, but no less frequently than annually, unless agreed to by both parties in writing.

Contractor acknowledges and agrees that it shall be subject to and bound by all of the terms and provisions set forth in this Section and shall require and, to the extent applicable, cause any subcontractor used by Contractor in connection with this Contract to agree to be subject to and bound by all of the foregoing. In addition, Contractor and its personnel and subcontractors shall ensure that all networks, servers, computer systems, hardware, IT infrastructure and other hardware on which the Services are hosted, installed, operated, processed, stored or otherwise located, comply with all such State of Iowa and federal IT laws, rules, regulations, standards, policies and guidelines, and all of the other standards and controls noted above.

Security Incident/Notification. Contractor shall notify the State of Iowa of Contractor's discovery of any actual or suspected breach of confidentiality, privacy or security (or any unauthorized access) with regard to any DNR data, and/or any breach of Contractor's or the State of Iowa's data security procedures, which includes, but is

not limited to, instances in which internal personnel access systems in excess of their user rights or use the systems inappropriately, any Breach of Security as defined in Iowa Code Chapter 715C, and any other breach of security as defined by any applicable law, rule, or regulation. Such notification to the State must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent within forty-eight (48) hours of discovery or notification of the breach or suspected breach.

Investigations and Remedies. In addition to Contractor's other obligations under this Contract, or under any law or regulation, Contractor agrees, at its sole expense, to take all steps necessary to promptly remedy any breach described in this Section and to fully cooperate with DNR in resolving such breach and mitigating any damage from such breach at Contractor's sole cost. At no additional cost to DNR, Contractor shall fully cooperate with DNR in investigating the breach, including, but not limited to, providing to DNR and assisting DNR in reviewing system, application, and access logs, conducting forensic audits of relevant systems, imaging relevant media, and making personnel available for interview. On notice of any actual or suspected breach, Contractor shall immediately institute appropriate controls to maintain and preserve all electronic evidence relating to the breach in accordance with industry best practices. Contractor shall deliver to DNR a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting any DNR data. Contractor shall deliver a preliminary assessment and plan as soon as practical, and regularly maintain and update such assessment and plan throughout the course of any investigation based on any findings. Contractor agrees that it will not notify any regulatory authority or any User relating to any such security breach on behalf of DNR unless DNR specifically requests in writing that Contractor do so. Contractor and DNR will work together to formulate a plan to rectify all security breaches.

Additional Procedures in the Event of Security Breach. Upon the DNR's determination that a breach of security (including but not limited to any Breach of Security as defined in Iowa Code Chapter 715C, and any other breach of security as defined by any applicable law, rule, or regulation) involving or relating to any DNR data has occurred or is reasonably possible, Contractor shall fully cooperate with DNR in rectifying any breach or misuse, including notifying all of DNR's affected Users. DNR shall determine, in its sole discretion, the content and means of delivery of the User notice. Notwithstanding any provision in this Contract to the contrary, Contractor shall be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees and any and all other amounts of any kind or nature whatsoever (including, without limitation, the reasonable value of time of DNR, the Iowa Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) related to, arising out of or incurred by or on behalf of DNR and the State of Iowa as a result of, any security breach caused directly or indirectly, in whole or in part, by Contractor, its affiliates, employees, or subcontractors, including, but not limited to, the costs of notifications of affected individuals and businesses and any applicable regulators or governmental entities (including, preparation, printing, mailing and delivery); the cost of opening and closing accounts, printing new checks, embossing new cards; the costs of forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for affected individuals; the costs of obtaining credit monitoring services and identity theft insurance for any person or entity whose personal data has or may have been acquired or compromised; and all other costs associated with corrective or other actions that are taken to mitigate or address the security breach. Contractor shall reimburse or pay to DNR all such expenses, fees, damages and all other amounts within fifteen (15) business days of the date of any written demand or request delivered by DNR to Contractor.

Security Audits by the State of Iowa. During the term of this Contract, DNR or its third party designee may, but is not obligated to, perform audits of Contractor's environment, including unannounced penetration and security tests, as it relates to the receipt, maintenance, use or retention of the DNR data. Any of the State of Iowa's regulators (and any federal agencies providing grant funds used to pay for Services, in whole or in part)

shall have the same right upon request. Contractor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

Security Testing; Compliance Audits. Contractor shall periodically test its systems for potential areas where security could be breached. During the Term, to the extent Contractor engages a third party auditor to perform an SSAE 16 of Contractor's operations, information security program, and/or disaster recovery/business continuity plan, Contractor shall promptly furnish a copy of the test report or audit report to DNR. In addition, Contractor shall disclose its non-proprietary security processes and technical limitations to DNR, such that adequate protection and flexibility can be attained between DNR and Contractor. For example, Contractor shall disclose its security processes with respect to virus checking and port sniffing to DNR such that DNR is capable of identifying necessary compensating controls to adequately safeguard and protect its data, information, and systems.

Data Ownership. All data obtained by Contractor in the performance of or during the Term of this Contract shall be and remain the sole and exclusive property of DNR, including without limitation all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of DNR.

Data Protection. Protection of personal privacy and data shall be an integral part of the business activities of Contractor to ensure there is no inappropriate or unauthorized use of the DNR data at any time. To this end, Contractor shall safeguard the confidentiality, integrity and availability of the DNR data. In so doing, Contractor shall comply with the following conditions:

- (a) Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of DNR data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own personal data and non-public data of similar kind. Additionally, such securities measures, to the extent applicable, shall comply with, and shall enable DNR to at all time comply fully with, all applicable federal, state, and local laws, rules, ordinances, codes, regulations and orders related to such security measures or other data security or safeguarding requirements.
- (b) All DNR data shall be encrypted at rest and in transit with controlled access. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Contractor is responsible for encryption of all DNR data. Additionally, Contractor shall ensure hard drive encryption consistent with validated cryptography standards.
- (c) At no time shall any DNR data be copied, disclosed or retained by Contractor, any subcontractor, or any party related to Contractor for subsequent use in any transaction that does not include DNR.
- (d) Contractor shall not use any DNR data collected, processed, stored or transmitted in connection with the Services provided under this Contract for any purpose other than fulfilling Contractor's express obligations and duties under this Contract.

Data Location. Contractor shall provide service pursuant to this Contract to DNR solely from data centers located in the continental United States of America. Storage of DNR data at rest and all backups shall be located solely in data centers located in the continental United States of America. Contractor shall not allow its

personnel or subcontractors to store DNR data or any data on any portable devices, including personal computers, tablets, or cell phones, except for devices that are used and permanently stored at all times only at its continental United States of America data centers. Contractor shall permit its personnel and subcontractors to access DNR data remotely only as required to provide technical support.

Section 16 DISASTER RECOVERY/BUSINESS CONTINUITY/DATA BACKUP/LOSS OF DATA

Creation, Maintenance and Testing. Contractor shall maintain a Business Continuity and Disaster Recovery Plan for the Services provided pursuant to this Contract (the "Plan"), and implement such plan in the event of any unplanned interruption of the Services. On or before the Effective Date, Contractor shall provide DNR with a copy of Contractor's current Plan, revision history, and any reports or summaries relating to past testing of the Plan. Contractor shall actively test, review, and update the Plan on at least an annual basis using American Institute of Certified Public Accountants standards and other industry best practices as guidance. Contractor shall promptly provide DNR with copies of all reports and/or summaries resulting from any testing of the Plan and with copies of all such updates to the Plan. All updates shall be subject to the requirements of this Section 14 (Disaster Recovery/Business Continuity). Any future updates or revisions to the Plan shall be no less protective than the plan in effect as of the Effective Date. Throughout the Term, Contractor shall maintain disaster avoidance procedures designed to safeguard DNR data, and the data processing capability and availability of the Services.

Activation of Plan. Contractor shall immediately notify the DNR of any disaster or other event in which the Plan is activated. If Contractor fails to reinstate the Services within the periods of time set forth in the Plan, DNR may in addition to any other remedies available hereunder, in its sole discretion, immediately terminate this Contract according to the termination provisions of this Contract. Without limiting Contractor's obligations under this Contract, whenever a disaster causes Contractor to allocate limited resources between or among Contractor's customers, DNR shall receive at least the same treatment as comparable Contractor customers with respect to such limited resources. The provisions of Section 19, Force Majeure, shall not limit Contractor's obligations under this Section. Further, nothing in this Section shall be construed as in any way limiting: Contractor's obligations elsewhere in this Contract, or any rights or remedies available to DNR.

This Section, and Contractor's duties, obligations and liability under this Section shall survive termination or expiration of this Contract.

Section 17 REPRESENTATIONS, WARRANTIES AND COVENANTS

Contractor Warranties. Contractor represents and warrants that: (a) it has the full power, capacity and authority to enter into and perform this Contract and to make the grant of rights contained herein, and its performance of this Contract does not violate or conflict with any contract to which Contractor is a party; (b) the Services will be performed in a professional, workmanlike, and timely manner; (c) all Services and Deliverables shall materially conform to applicable Specifications and all other requirements set forth in this Contract at all times during the Term; (d) the State of Iowa's permitted use of the Services and Deliverables do not and will not infringe the intellectual property rights of any third party at any time during the Term of this Contract or as may be applicable thereafter; (e) there is no pending or threatened litigation that would have a material adverse impact on Contractor's performance under the Contract; (f) Contractor shall not store, transmit or make available any State of Iowa Confidential Information with or to any entity or individual outside the continental United States; (g) the Documentation shall be complete and accurate so as to enable a reasonably skilled person to effectively use all features and functions of the System, Services and/or Deliverables without assistance from Contractor and, on each date on which Contractor delivers any Documentation to the State of Iowa, such Documentation is Contractor's most current version thereof; (h) there is no existing pattern or repetition of material customer

complaints regarding the Deliverables or Services, including functionality or performance issues, and that Contractor's engineers have not currently identified any repeating adverse impact on the Deliverables or Services, including functionality or performance, for which the root cause is believed to be a flaw or defect in the Deliverables or Services; (i) it shall use industry best practices to scan and remove any viruses, worms, Trojan horses, and other similar harmful or destructive code from the Services and Deliverables both (1) prior to Contractor's delivery of any Deliverables to the State of Iowa, and (2) on an ongoing basis on a frequency consistent with industry best practices to the extent applicable with respect to any Services or Deliverables (including the System or Application Services); and (j) Contractor is not in arrears with respect to the payment of any monies due and owing the State of Iowa or any Governmental Entity thereof, including but not limited to the payment of taxes and employee benefits.

Deliverables. Contractor represents and warrants that: (a) all Deliverables, excluding Third Party Software, shall be wholly original with and prepared solely by Contractor; (b) Contractor owns, possesses, holds, and has received or secured all rights, permits, permissions, licences and authority necessary to provide the Deliverables to the State of Iowa hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the State of Iowa without violating any rights of any third party; (c) 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 State of Iowa herein; and (d) the State of Iowa shall peacefully and quietly use and enjoy the Deliverables without suit, disruption or interruption.

Compliance with Applicable Laws. Contractor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Contract, including without limitation, all laws relating to privacy and information security, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, laws relating to the use of targeted small businesses as subcontractors or suppliers. Contractor shall comply with any applicable reporting and compliance standards of the Iowa Department of Administrative Services regarding equal employment. Contractor may be required to submit its affirmative action plan to the Iowa Department of Administrative Services to comply with the requirements of 11 Iowa Admin. Code Chapter 121. Contractor shall make the provisions of this Section a part of its contracts with any subcontractors providing goods or services related to Contractor's performance of this Contract. Contractor further represents, warrants and covenants that the Services and Deliverables comply with and will at all times comply with the State of Iowa Website Accessibility Standard (available at <https://ocio.iowa.gov/standards>) and including Section 508 of the Rehabilitation Act of 1973, as amended, all standards and requirements established by the Architectural and Transportation Barriers Access Board, and the World Wide Web (W3C) Web Accessibility Initiative. Without limiting the foregoing, Contractor covenants that the Application Services will pass W3C validation and meet the accessibility standards of 36 C.F.R. § 1194, which implements Section 508 of the Rehabilitation Act of 1973. Contractor further represents, warrants and covenants that the Services and Deliverables comply with, and will at all times comply with during the Term of this Contract shall comply with, all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders. Contractor represents, warrants and covenants that during the Term, the Services and Deliverables provided hereunder (and the State's and State User's use of same) will enable the State to at all times comply fully with all applicable federal, state, and local laws, rules, ordinances, codes, regulations and orders. Notwithstanding any provision in this Contract to the contrary, to the extent that Contractor fails to meet or otherwise breaches any of its duties or obligations under this Section, it shall be liable and responsible for any fines, penalties, taxes, fees, damages, costs, expenses, or other amounts assessed to, imposed against or

otherwise incurred by DNR or the State of Iowa, and DNR or the State may consider any such failure or breach to be material breach of this Contract.

Disclaimer of Other Warranties. EXCEPT AS EXPRESSLY STATED IN THIS CONTRACT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED.

Section 18 INTELLECTUAL PROPERTY

Ownership. This is not a work made-for-hire contract (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 Contract, 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. Except as otherwise set forth in a Statement of Work, to the extent Contractor provides any intellectual property to DNR or the State of Iowa in connection with the Services and/or Deliverables, such intellectual property shall be deemed part of the Services hereunder and, among other things, be subject to the license granted in Section 5, above.

Section 19 FORCE MAJEURE

If either Party cannot perform any of its obligations because of any act of God, court order, war, or any other similar cause not within the Party's reasonable control and could not be avoided through the exercise of reasonable care and diligence (a "**Force Majeure Event**"), then the non-performing Party will: (a) immediately notify the other Party; (b) take reasonable steps to resume performance as soon as possible; and (c) not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues for a period of five (5) business days, the State of Iowa may terminate this Contract by providing written notice to Contractor. Notwithstanding the foregoing, a Force Majeure Event will not relieve Contractor of its obligation to comply with the confidentiality, security, and disaster recovery requirements of this Contract. A Force Majeure Event does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of the Contractor or any subcontractor used by the Contractor; claims or court orders that restrict Contractor's ability to provide goods and services contemplated by this Contract; strikes; supply chain disruptions; labor unrest; Internet outages; viruses; Trojan Horses; worms; cancelbots; denial of service attacks; hacking; intrusions; security breaches (including but not limited to any Breach of Security as defined in Iowa Code Chapter 715C, and any other breach of security as defined by any applicable law, rule, or regulation)); or any other similar item, malicious code or action that might interfere with or adversely affect the Services. If delay results from Contractor's, subcontractor's or supplier's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contractor unless the subcontractor or supplier is prevented from timely performance by a Force Majeure Event as defined in this Contract.