

[TITLE]

[contract number]

Iowa Insurance Division  
1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315

and

[Contractor]  
[address]

[Month Year]

Table of Contents

**SECTION 1: IDENTITY OF PARTIES** ..... 1

**SECTION 2: PURPOSE** ..... 1

**SECTION 3: DURATION OF CONTRACT** ..... 1

**SECTION 4: DEFINITIONS** ..... 1

**SECTION 5: SCOPE OF SERVICES**..... 2

    5.1 Scope of Services. .... 2

    5.2 Monthly Status Reports..... 2

    5.3 Monitoring Plan..... 2

    5.4 Performance Review Plan. .... 2

    5.5 Industry Standards..... 3

**SECTION 6. COMPENSATION AND MAXIMUM ALLOWABLE COST** ..... 3

    6.1 Pricing ..... 3

    6.2 Billings ..... 3

    6.3 Withholding Payments ..... 3

    6.4 Setoff Against Sums Owed by the Contractor ..... 4

    6.5 The State has established rules for limitations on reimbursement expenses..... 4

**SECTION 7: TERMINATION**..... 4

    7.1 Immediate Termination by the State ..... 4

    7.2 Termination for Cause by the Division ..... 4

    7.3 Termination upon Notice ..... 6

    7.4 Termination Due to Lack of Funds or Change in Law ..... 6

    7.5 Limitation of the Division’s Payment Obligations ..... 7

    7.6 Contractor’s Termination Duties..... 8

    7.7 Termination for Cause by Contractor..... 8

**SECTION 8: CONFIDENTIAL INFORMATION** ..... 8

    8.1 Access to Confidential Information ..... 8

    8.2 No Dissemination of Confidential Information ..... 9

    8.3 Subpoena ..... 9

    8.4 Reporting of Unauthorized Disclosure..... 9

    8.5 Requested Confidential Treatment..... 9

    8.6 Survives Termination ..... 9

**SECTION 9: INDEMNIFICATION AND LIABILITY** ..... 10

    9.1 Indemnification by the Contractor ..... 10

9.2	Legislative Changes.....	10
9.3	Survives Termination. ....	11
<b>SECTION 10: INSURANCE.....</b>		<b>11</b>
10.1	Insurance Requirements .....	11
10.2	Types and Amounts of Insurance Required .....	11
10.3	Certificates of Coverage .....	12
10.4	Waiver of Subrogation Rights .....	12
<b>SECTION 11: PROJECT MANAGEMENT &amp; REPORTING .....</b>		<b>12</b>
11.1	Project Manager.....	12
11.2	Review Meetings .....	12
11.3	Reports.....	13
11.4	Problem Reporting Omissions.....	13
11.5	Change Order Procedure .....	13
<b>SECTION 12: INTELLECTUAL PROPERTY.....</b>		<b>14</b>
12.1	Ownership and Assignment of Other Deliverables .....	14
12.2	Waiver .....	14
12.3	Further Assurances .....	14
<b>SECTION 13: WARRANTIES.....</b>		<b>15</b>
13.1	Construction of Warranties.....	15
13.2	Representations and Warranties .....	15
<b>SECTION 14: CONTRACT ADMINISTRATION .....</b>		<b>17</b>
14.1	Independent Contractor .....	17
14.2	Compliance with the Law; Nondiscrimination in Employment. ....	17
14.3	Non-Exclusive Rights.....	17
14.4	Non-Supplanting Requirement.....	18
14.5	Compliance with Iowa Code Chapter 8F.....	18
14.6	Amendments.....	18
14.7	Third-Party Beneficiaries .....	18
14.8	Use of Third Parties.....	18
14.9	Choice of Law and Forum .....	18
14.10	Assignment and Delegation .....	18
14.11	Integration.....	19
14.12	Headings or Captions.....	19
14.13	Not a Joint Venture .....	19

14.14	Joint and Several Liability .....	19
14.15	Supersedes Former Contracts or Agreements .....	19
14.16	Waiver.....	19
14.17	Notice.....	19
14.18	Cumulative Rights .....	20
14.19	Severability .....	20
14.20	Time is of the Essence .....	20
14.21	Authorization .....	20
14.22	Successors in Interest.....	21
14.23	Records Retention and Access .....	21
14.24	Qualifications of Staff.....	22
14.25	Solicitation .....	22
14.26	Obligations Beyond Contract Term .....	22
14.27	Counterparts.....	22
14.28	Delays or Impossibility of Performance.....	22
14.29	Suspensions and Debarment .....	23
14.30	Conflict of Interest .....	23
14.31	Certification Regarding Sales and Use Tax .....	23
14.32	Right to Address the Board of Directors or Other Managing Entity.....	24
14.33	Repayment Obligation .....	24
14.34	Further Assurances and Corrective Instruments .....	24
14.35	Immunity from Liability .....	24
14.36	Public Records .....	24
14.37	Use of Name or Intellectual Property.....	24
14.38	Taxes.....	24
14.39	No Minimums Guaranteed.....	25
14.40	Procurement .....	25
14.41	Incorporation of Documents .....	25
14.42	Intent of References to Bid Documents .....	25
<b>SECTION 15. EXECUTION .....</b>		<b>25</b>

This Contract for services is between the Iowa Insurance Division and Contractor. The parties agree as follows:

**SECTION 1: IDENTITY OF PARTIES**

- 1.1 The Iowa Insurance Division (“Division”) is authorized to enter into this Contract. The Division’s address is 1963 Bell Ave, Suite 100, Des Moines, Iowa 50315.
- 1.2 [Contractor] (“Contractor”) is a [state] corporation with its [headquarters/principal place of business] located at [address], and is authorized to do business in the state of Iowa and to enter into this Contract.

**SECTION 2: PURPOSE**

The parties have entered into this Contract for the purpose of retaining the Contractor to provide [insert purpose].

**SECTION 3: DURATION OF CONTRACT**

- 3.1 The initial term of the Contract [is [date] through [date]]/ [begins on the date that the last party executes this Contract as indicated by the date stated under that party’s signature line ends on [date]], unless extended or terminated earlier in accordance with the Termination section of this Contract.
- 3.2 The Division may, in its sole discretion, exercise any applicable extension by giving the Contractor written notice of the decision [at least thirty days] prior to the expiration of the initial term or renewal term.

**SECTION 4: DEFINITIONS**

The following terms are defined as set forth below:

- 4.1 *Bid Proposal* or *Proposal* means the Contractor’s proposal submitted in response to the RFP, included as Attachment A to this Contract.
- 4.2 *Contract* means this document and any attachments, addenda, or amendments; the RFP and addenda thereto; and the Bid Proposal. The Contract constitutes the entire agreement between the Division and the Contractor.
- 4.3 *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.
- 4.4 *Division* means the Iowa Insurance Division, a division of the Iowa Department of Commerce, an agency of the State of Iowa.

- 4.5 *Project* means [services] which is the subject of this Contract.
- 4.6 *RFP* means the [date] Request for Proposals for [services] issued by the Division, including any addenda, attachments, or appendices.
- 4.7 *State* means the State of Iowa, the Division, 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.
- 4.8 *Contractor* means [Contractor], the successful bidder chosen by the Division pursuant to the RFP process.

## **SECTION 5: SCOPE OF SERVICES**

The Contractor's services will be defined as set forth in the Contractor's Bid Proposal, specifically incorporating the [section/items], and as further stipulated below:

### 5.1 Scope of Services.

The Contractor shall provide the services set forth in this Section 5 in accordance with the defined performance criteria set forth below.

- (a) [Complete description of performance requirements]
- (b) [Criteria]
- (c) [Timing]

### 5.2 Monthly Status Reports.

Contractor shall provide monthly status reports to the Division, to the attention of [Name, phone, email]. The monthly status report shall include [items]. The monthly status report shall also include a monthly invoice that details staffing, hours, rate, description, and total.

### 5.3 Monitoring Plan.

The Contractor shall provide monthly reports as set forth in this Section. The Division also shall review the details of the monthly invoices to determine the Contractor's performance.

### 5.4 Performance Review Plan.

The Division shall review and evaluate the performance of Contractor at the end of the Contract term, including evaluation of the efficiency and quality of Contractor's work, specifically determining whether:

- (a) 100% of the requirements of the Contract were met;
- (b) All reports required from Contractor in the Contract were submitted on a timely basis, unless an extension was granted by the Division in writing;

- (c) Contractor attended all meetings required pursuant to the Contract, unless delayed or waived by the Division in writing; and
- (d) Contractor adhered to all confidentiality requirements pursuant to the Contract.

#### 5.5 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 industry for similar tasks and projects. In the absence of a detailed specification for the performance of a portion of the Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

### **SECTION 6. COMPENSATION AND MAXIMUM ALLOWABLE COST**

#### 6.1 Pricing

Contractor will be paid for the Deliverables described in the Scope of Services after the services have been performed or expenses or costs have been incurred. In no event, shall the maximum allowable cost under the initial term this Contract exceed [insert contract maximum]. 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.

#### 6.2 Billings

Contractor must submit monthly invoices for Deliverables rendered in accordance with this Contract. The invoice must comply with all applicable Iowa laws and rules concerning payment of such claims and contain the information stated in section ####. The Division shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The Division shall pay all approved invoices in arrears and, in conformance with Iowa Code section 8A.514 and 11 Iowa Administrative Code rule 41.1(2), within 60 days of receipt of the invoice, and shall pay interest at the rate of one percent per month on the unpaid amount of the claim. The Division 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.

#### 6.3 Withholding Payments

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

- (a) Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or
- (b) 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 Division under this Contract.

6.4 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:

- (a) Any sum invoiced by, or owed to, Contractor under this Contract, or
- (b) 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.

6.5 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.

**SECTION 7: TERMINATION**

7.1 Immediate Termination by the State

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

- (a) 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;
- (b) 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;
- (c) The Contractor fails to comply with confidentiality laws or provisions;
- (d) 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.

7.2 Termination for Cause by the Division

The Division may terminate this Contract upon written notice for the breach by the Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the



time period specified in the Division's notice of breach or any subsequent notice or correspondence delivered by the Division to Contractor, provided that cure is feasible. In addition, the Division may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- (a) Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Bid Proposal that is false, deceptive, or materially incorrect or incomplete;
- (b) 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;
- (c) Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- (d) Contractor terminates or suspends its business;
- (e) 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;
- (f) 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;
- (g) The Division determines or believes the Contractor has engaged in conduct that:  
(a) has or may expose the Division or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- (h) 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;
- (i) Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy;  
or
- (j) Contractor, or any corporation, shareholder or entity having or owning a controlling interest in Contractor, has been engaged in any of the following, or has had any of the following occur with respect to them:

- i. Commencing or permitting a filing against it which is not discharged within 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;
- ii. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- iii. Making an assignment for the benefit of creditors; 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
- iv. Taking any action to authorize any of the foregoing. The Division's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Division, and the Division shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

### 7.3 Termination upon Notice

Following 30 days written notice, the Division 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.

### 7.4 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 Division shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

- (a) The legislature or governor fail in the sole opinion of the Division to appropriate funds sufficient to allow the Division to either meet its obligations under this

Contract or to operate as required and to fulfill its obligations under this Contract;  
or

- (b) Funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Division to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Division in its sole discretion; or
- (c) The Division'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
- (d) The Division's duties, programs or responsibilities are modified or materially altered; or
- (e) 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 Division's ability to fulfill any of its obligations under this Contract. The Division shall provide Contractor with written notice of termination pursuant to this section.

#### 7.5 Limitation of the Division's Payment Obligations

In the event of termination of this Contract for any reason by either party (except for termination by the Division pursuant to Section 7.1), the Division 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 Division is obligated to pay pursuant to this Contract; provided however, that in the event the Division terminates this Contract pursuant to Section 7.4, the Division'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 7.5 in no way limits the rights or remedies available to the Division and shall not be construed to require the Division to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Division in accordance with the terms of this Contract. The Division shall not be liable, under any circumstances, for any of the following:

- (a) The payment of unemployment compensation to Contractor's employees;
- (b) The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- (c) 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;

- (d) 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;
- (e) 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.

#### 7.6 Contractor's Termination Duties

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

- (a) Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 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 Division may require.
- (b) Immediately cease using and return to the Division any property or materials, whether tangible or intangible, provided by the Division to Contractor.
- (c) Cooperate in good faith with the Division and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
- (d) Immediately return to the Division any payments made by the Division for Deliverables that were not rendered or provided by Contractor.
- (e) Immediately deliver to the Division any and all Deliverables for which the Division 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 at that time.

#### 7.7 Termination for Cause by Contractor

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

### **SECTION 8: CONFIDENTIAL INFORMATION**

#### 8.1 Access to Confidential Information

The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Division 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 Division. The Contractor shall provide to the Division a written description of its policies and procedures to safeguard

confidential information prior to the signing of this Contract. 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 Division at all times.

#### 8.2 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 Division, either during the period of the Contract or thereafter. Any data supplied by the Division to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Division. 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 Division. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

#### 8.3 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 Division and cooperate with the Division in any lawful effort to protect the confidential information.

#### 8.4 Reporting of Unauthorized Disclosure

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

#### 8.5 Requested Confidential Treatment

Contractor requested confidential treatment with respect to some information or material contained within its Bid Proposal. 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. Division may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Division determines the information or material is not confidential under Iowa or other applicable law, or if Contractor rescinds its request for confidential treatment.

#### 8.6 Survives Termination

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

## **SECTION 9: INDEMNIFICATION AND LIABILITY**

### **9.1 Indemnification 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 to the extent related to, resulting from, or arising out of:

- (a) Any breach of this Contract;
- (b) Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- (c) The Contractor’s negligent performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;
- (d) 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;
- (e) 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 (except to the extent that the applicable infringement resulted from (i) the Contractor’s use of materials provided by the Division, (ii) modifications made by the Contractor to any materials furnished by the Division or combinations of such materials with other property or products by the Division, or (iii) the Division’s use of such materials in a manner not permitted or contemplated by this Contract)

### **9.2 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 Division liable in any manner for the resulting changes. The Division 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 Division’s right to terminate the Contract pursuant to the termination provisions.

9.3 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 Division or any other Indemnified Party.

**SECTION 10: INSURANCE**

10.1 Insurance Requirements

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State, 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 and the Division shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

10.2 Types and Amounts of Insurance Required

Unless otherwise requested by the Division in writing, the Contractor shall cause to be issued insurance coverages in amounts specified below insuring the Contractor and any subcontractors against all general liabilities, product liability, personal injury, property damage, and professional liability, as set forth in Section 9, for each occurrence or claim, as the case may be. In addition, the Contractor shall ensure it has any necessary workers’ compensation and employer liability insurance as required by Iowa law.

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

### 10.3 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 provisions as required by this Contract, to the Division upon execution of this Contract. The certificates shall be subject to approval by the Division. 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 Division. Approval of the insurance certificates by the Division shall not relieve the Contractor of any obligation under this Contract.

### 10.4 Waiver of Subrogation Rights

The Contractor shall obtain a waiver of any subrogation rights that any of Contractor's 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.

## **SECTION 11: PROJECT MANAGEMENT & REPORTING**

### 11.1 Project Manager

- (a) 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. The Project Managers shall be the contact persons for matters related to this Contract, and shall be the primary person to monitor the implementation of and adherence to terms of this Contract. The Division may request in-person meetings with the Contractor at mutually agreeable times and places. Support and meetings may be by telephone if the parties mutually agree in writing. Contractor will provide all copies of materials, manuals, guides and other materials needed for the training.
- (b) The Project Managers for each party shall be as follows, to serve until the expiration of this Contract or until the designation of a substitute Project Manager:
  - i. For the Division:
  - ii. For the Contractor:

### 11.2 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.



### 11.3 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:

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

### 11.4 Problem Reporting Omissions

The Division'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 Division may have. The Division'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.

### 11.5 Change Order Procedure

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

- (a) **Written Request:** The Division shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.
- (b) **The Contractor's Response:** The Contractor shall submit to the Division a firm cost proposal for the requested change order within five (5) business days of receiving the change order request.
- (c) **Acceptance of the Contractor Estimate:** If the Division 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.

- (d) 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.

## **SECTION 12: INTELLECTUAL PROPERTY**

### 12.1 Ownership and Assignment of Other Deliverables

Contractor agrees that the State and the Division shall become the sole and exclusive owners of all Deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Division all right, title and interest in and to all Deliverables and 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. Contractor represents and warrants that the State and the Division shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Division and the payment of such royalties or other compensation as the Division deems appropriate. Unless otherwise requested by Division, upon completion or termination of this Contract, Contractor will immediately turn over to Division all Deliverables not previously delivered to Division, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Division, except for copies maintained by the Contractor in accordance with its legal, disaster recovery and records retention requirements. Copies maintained for these sole purposes are subject to the Contractor's confidentiality obligations.

### 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 Division's or the State's rights in and to the Deliverables.

### 12.3 Further Assurances

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

## **SECTION 13: WARRANTIES**

### **13.1 Construction of Warranties**

Warranties made by the Contractor in this Contract shall not be construed as limiting or negating any warranty provided by law, including, without limitation, warranties that arise through course of dealing or usage of trade, 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 Division,. 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.

### **13.2 Representations and Warranties**

The Contractor represents and warrants that:

- (a) 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 Division hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Division hereunder or under any license agreement related hereto without violating any rights of any third party;
- (b) 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 Division herein;
- (c) The Division shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.
- (d) Both the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and the Division'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.
- (e) 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 Division in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or

personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the Division's request and at the Contractor's sole expense: (1) procure for the Division 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 Division all fees, charges and any other amounts paid by the Division with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the Division and the State and their 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 Division and shall survive termination of this Contract.

- (f) 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 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 Division notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Division, 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 Division any fees or compensation paid to Contractor for the unsatisfactory services.
- (g) 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 (29 USC § 794d), as amended, and all standards and requirements established by the Iowa Department of Administrative Services, and Iowa Office of the Chief Information Officer.
- (h) 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 Division will not have any obligations with respect thereto.

## **SECTION 14: CONTRACT ADMINISTRATION**

### **14.1 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 Division or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Division will not withhold taxes on behalf of the Contractor (unless required by law).

### **14.2 Compliance with the Law; Nondiscrimination in Employment.**

- (a) 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.
- (b) 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.
- (c) 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 14.9, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.
- (d) 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.

### **14.3 Non-Exclusive Rights**

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

#### 14.4 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.

#### 14.5 Compliance with 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 Division.

#### 14.6 Amendments

This Contract may be amended in writing from time to time by mutual consent of the parties.

#### 14.7 Third-Party Beneficiaries

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

#### 14.8 Use of Third Parties

The Division 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 Division in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Division 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 Division shall have the right to request the removal of a subcontractor from the Contract for good cause.

#### 14.9 Choice of Law and Forum

The laws of the State 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 Division or the State of Iowa.

#### 14.10 Assignment and Delegation

Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Division. 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 Division. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

#### 14.11 Integration

This Contract, including documents incorporated pursuant to the “Incorporation of Documents” section, 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.

#### 14.12 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.

#### 14.13 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.

#### 14.14 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.

#### 14.15 Supersedes Former Contracts or Agreements

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

#### 14.16 Waiver

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

#### 14.17 Notice

- (a) Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing (i) by hand, (ii) by registered or certified mail, postage prepaid, return receipt requested; (iii) by a nationally recognized overnight courier service; or (iv) by electronic mail (with read receipt or other tracking mechanism to confirm receipt), which shall be addressed to each party as set forth as follows:

- i. If to the Division, to Tracy Swalwell, Rule and Procurement Specialist, Iowa Insurance Division, 1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315 or [Tracy.Swalwell@iid.iowa.gov](mailto:Tracy.Swalwell@iid.iowa.gov).
  - ii. If to the Contractor, to [Name, title, entity, address].
- (b) Each such notice shall be deemed to have been provided:
  - i. At the time it is actually received; or,
  - ii. Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
  - iii. Within five days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.
- (c) 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.

#### 14.18 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.

#### 14.19 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.

#### 14.20 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 Division are responsive to the Division's requirements and requests in all respects.

#### 14.21 Authorization

Contractor represents and warrants that:

- (a) It has the right, power and authority to enter into and perform its obligations under this Contract.
- (b) 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.

#### 14.22 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.

#### 14.23 Records Retention and Access

- (a) 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 Division throughout the term of this Contract and for a period of at least five 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-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-year period, whichever is later. The Contractor shall permit the Division, 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 Division reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. Notwithstanding anything herein to the contrary, any audit hereunder must (i) be at the Division's sole expense, (ii) be upon reasonable advance notice to Contractor and during Contractor's normal business hours, (iii) not unreasonably interfere with the business operations of Contractor, (iv) absent Contractor's default, be limited to once in any twelve month period, unless otherwise required by law, (v) be limited to books, records and personnel of Contractor directly relating to the services performed under this Contract and (vi) at Contractor's request, be subject to the execution of a confidentiality agreement satisfactory to Contractor. In connection with any such audit, Contractor shall under no circumstances be required to breach (i) any obligations of confidentiality it may owe to any of its employees or any third-party client, unless ordered to do so by a court, or (ii) any applicable law.
- (b) 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.

- (c) 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.
- (d) 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 Division.
- (e) The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.

#### 14.24 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.

#### 14.25 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.

#### 14.26 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 Division 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.

#### 14.27 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.

#### 14.28 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 Division. 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 services 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.

#### 14.29 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 Division or State Division. 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.

#### 14.30 Conflict of Interest

Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Division 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 chapter 68B shall apply to this Contract. If a conflict of interest is proven to the Division, the Division may terminate this Contract, and the Contractor shall be liable for any excess costs to the Division 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 Division.

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

#### 14.32 Right to Address the Board of Directors or Other Managing Entity

The Division 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 Division determines appropriateness.

#### 14.33 Repayment Obligation

In the event that any State or federal funds are deferred 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 Division 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.

#### 14.34 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.

#### 14.35 Immunity from Liability

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

#### 14.36 Public Records

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

#### 14.37 Use of Name or Intellectual Property

Contractor agrees it will not use the Division’s or the State’s name or any of its 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 Division or the State.

#### 14.38 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.

14.39 No Minimums Guaranteed

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

14.40 Procurement

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

14.41 Incorporation of Documents

The parties acknowledge that the Contract consists of the Contract terms and conditions in the documents listed in the definition of “Contract” in section 4.2, unless otherwise stated in the Contract. The RFP and the Bid Proposal are incorporated into the Contract by this 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 Division 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.

14.42 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 refer 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 Division cannot be implied from the Bid Proposal.

**SECTION 15. EXECUTION**

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Contract and have caused their duly authorized representatives to execute this Contract.

[CONTRACTOR]

IOWA INSURANCE DIVISION

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**ATTACHMENTS:**

- Technical Proposal
- Cost Proposal