

**Iowa Office of the Chief Information Officer
Contracts Declaration & Execution ("CD&E")**

Title of Contract (the "Agreement"): Broadband Support		Contract Number: 2023-BUS-535	
1. Contracting Agency Information			
Department of Management, Iowa Office of the Chief Information Officer ("Office" or "OCIO")			
Main Business Address: 200 E. Grand Avenue Des Moines, IA 50309		Address for formal notices ("Notice Address"): OCIO Attn: Matt Behrens, CIO 200 E. Grand Ave. Des Moines, IA 50309 email: matt.behrens@iowa.gov	
2. Vendor Information			
Business Name of Vendor ("Vendor"): RSM US LLP		Organized/incorporated under the laws of: Iowa	
Main Business Address: 400 Locust Street Suite 640, Des Moines IA 50311	Billing Address/Contact: 5155 Payspher Circle Chicago, IL 60674	Address for formal notices ("Notice Address"): 400 Locust Street Suite 640, Des Moines IA 50311 email: Joel.Anderson@rsmus.com	
3. Term of Contract			
Contract Begin / Effective Date: as of the date of the last signature below	Base Contract Term End Date: May 31, 2026	Possible Yearly Extensions after Base Term: 7	Terminal Date of Contract (inclusive of all possible extensions): June 1, 2033
4. <u>Documents Incorporated/Order of Precedence.</u> This Agreement, any and all attachments to this Agreement which are incorporated by reference as if fully set forth herein, and the RFP and Proposal which are incorporated by reference as if fully set forth herein, together comprise the terms and conditions governing the relationship between the Parties ("Agreement"). In the case of any conflict or inconsistency between the specific provisions of this Agreement, any and all attachments to this Agreement, or the RFP and the Proposal, such conflict or inconsistency shall be resolved in the following order: 1. Special Terms and Conditions attached to the Agreement; 2. Specific provisions of the Broadband Support Agreement; 3. Specific provisions of the RFP #0423-185-01; 4. The Proposal;			

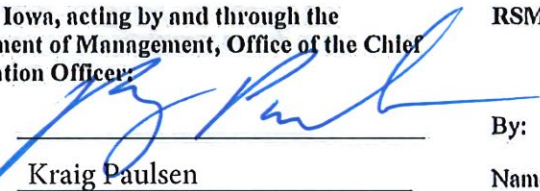
5. Specific provisions of any Purchasing Instruments (Purchase Order(s)/Statement(s)) executed under the Broadband Support Agreement.

5. Signatures.

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

State of Iowa, acting by and through the
Department of Management, Office of the Chief
Information Officer:

RSM US LLP

By: 

By: 

Name: Kraig Paulsen

Name: Jill Reyes

Title: Director

Title: Partner, grant consultation

Date: 9-12-23

Date: 31-Aug-2023

Iowa Office of the Chief Information Officer
Broadband Support

1. Overview.

- 1.1. Purpose. This Agreement establishes the terms and conditions pursuant to which the Agency may procure support for the Empower Rural Iowa Broadband Program, as contemplated by and in accordance with the RFP and as set forth in the Proposal.
- 1.2. Term. The initial term of this Agreement shall be as stated on the CD&E, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the Agency shall have the option to extend/renew this Agreement as stated on the CD&E. The initial term and any extensions and renewals shall be collectively referred to herein as the “**Term.**” The decision to extend or renew this Agreement shall be at the sole option of the Agency and may be exercised by the Agency by providing written notice to Vendor.
- 1.3. Availability of Contract to Other Entities. All other agencies of the State of Iowa and all political subdivisions of the State of Iowa, or another State or U.S. Territory and their political subdivisions (in accordance with their own procurement regulations as applicable) may make purchases pursuant to the Contract as permitted by the RFP.

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

- 2.1. “**Acceptance**” means the Agency has determined a portion of the Deliverables, Application Services, or System(s) satisfy its Acceptance Tests. “**Final Acceptance**” means the Agency has determined all Deliverables, Application Services, or System(s) satisfy the Agency’s Acceptance Tests. “**Non-acceptance**” means the Agency has determined that a portion of or all of the Deliverables, Application Services, or System(s) have not satisfied the Agency’s Acceptance Tests.
- 2.2. “**Acceptance Criteria**” means the Specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, or other criteria designated by the Agency and against which Acceptance Tests are conducted, including any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, the RFP, the Proposal, any documentation, and any applicable state, federal, foreign, and local laws, rules, and regulations.
- 2.3. “**Acceptance Tests**” or “**Acceptance Testing**” means the tests, reviews, and other activities that are performed by or on behalf of the Agency to determine whether any or all Deliverables, Application Services, or System(s) meet Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.
- 2.4. “**Agreement,**” unless the context requires otherwise, means the collective documentation memorializing the terms of the agreement identified on the CD&E and all other attachments to the CD&E, accompanying the CD&E, or executed under or pursuant to the Agreement.
- 2.5. “**Application Services**” means the hosted applications and related Services as may be further defined and described in the RFP, Proposal, and Special Terms and Conditions attached hereto and labeled “Application Services/System(s) Description and Related

Fees,” and related Purchasing Instruments,” including any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the Agency’s specific needs or use.

- 2.6. **“Authorized Contractors”** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by the Agency or any State Users to use, maintain, support, modify, enhance, host, or otherwise assist the Agency with any Deliverables, the Application Services, or System(s) provided hereunder.
- 2.7. **“Confidential Information”** means, subject to any applicable federal, state, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party (**“Disclosing Party”**) to the other Party (**“Receiving Party”**) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent Third Party having, to Receiving Party’s knowledge, a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency, or regulatory authority, or by applicable regulatory or professional standards and in compliance with section 10.1.3 of this Agreement; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.
- 2.8. **“Customer Data”** means all information, data, materials, or documents (including Confidential Information and Personal Data) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from the Agency, the State of Iowa, State Users, or Users, directly or indirectly, including from any Authorized Contractors of any of the foregoing, related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor in connection with any Customer-Owned Deliverables provided hereunder and all originals and copies of any of the foregoing.
- 2.9. **“Customer Property”** means any property, whether tangible or intangible, of or belonging to the Agency, including Customer Data and Customer-Owned Deliverables, software, hardware, programs, or other property possessed, owned, or otherwise controlled, maintained, or licensed by the Agency, including Third Party Software or Third Party Intellectual Property.
- 2.10. **“Customer-Owned Deliverables”** means any Deliverables discovered, created, or developed by Vendor at the direction of the Agency or for a specific project under this Agreement, including all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks,

trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto.

- 2.11. **"Deficiency"** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related to a Deliverable(s), the Application Services, or the System(s), including any failure of a Deliverable(s), the Application Services, or System(s), to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable(s), the Application Services, or System(s).
- 2.12. **"Deliverables"** means all of the goods, Software, work, work product, items, materials, and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or otherwise made available through Vendor, directly or indirectly, in connection with this Agreement, including the Application Services, System(s), Software, and Value-Added Services, and documentation, including as identified, defined, and agreed upon in a Purchasing Instrument executed hereunder.
- 2.13. **"Error"** means (i) with respect to any Deliverable(s), the Application Services, or System(s) any defect, flaw, error, bug, or problem of any kind, or any failure of the Deliverable(s), Application Services, or System(s) to conform to an applicable Specification; or (ii) with respect to the Application Services, System(s), or related Deliverables, any failure or problem that impairs or adversely affects the performance, availability, or functionality thereof.
- 2.14. **"Error Correction"** means either a modification, procedure, or routine that corrects an Error in all material respects.
- 2.15. **"I.T. Governance Document(s)" or "Governance Document(s)"** means any Information Technology policies, standards, processes, guidelines, or procedures developed by the OCIO or the Agency.
- 2.16. **"Personal Data"** means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- 2.17. **"Proposal" or "Vendor's Proposal"** means Vendor's response to the RFP.
- 2.18. **"Purchasing Instrument"** means an individual transactional document executed hereunder for the purchase of Services or Deliverable(s) pursuant to this Agreement, including a **"Purchase Order"** or **"Statement of Work"** executed hereunder (*see* the Sample Purchasing Instrument/Statement of Work attached hereto for a sample Statement of Work), regardless of form, and which identifies the specific Services or Deliverable(s) to be purchased and any Acceptance Criteria or Specifications related thereto.
- 2.19. **"Security Breach"** means the unauthorized acquisition of or access to Customer Data by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data. **"Security Breach"** shall also be deemed to include any breach of confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.
- 2.20. **"Services"** may include:

- 2.20.1. Community Outreach, Grant Program Compliance and Monitoring, and Grant Administration.
- 2.20.2. The Application Services and System(s).
- 2.20.3. Application Services and System(s) maintenance and support services.
- 2.20.4. Any other services within the scope of the RFP and Proposal, including services considered Value-Added Services, including as may be further defined, described, and agreed upon by the Parties in a Purchasing Instrument executed hereunder.
- 2.21. **“Software”** means any and all other software, programs, applications, modules, and components, in object code form, all related documentation, and enhancements, and all copies of the foregoing.
- 2.22. **“Specifications”** means any and all specifications, requirements, technical standards, performance standards, representations, warranties, criteria, and other specifications related to any Deliverables, including the Application Services and System(s), described or stated in this Agreement (including any exhibit or documentation attached to, or provided in connection with, this Agreement), any Purchasing Instrument(s), the RFP, the Proposal, and, solely to the extent not inconsistent with the foregoing, the documentation.
- 2.23. **“State Users”** means the State of Iowa, the Agency, OCIO, and any other Governmental Entity as may be later designated by the Agency in its sole discretion and communicated to Vendor in writing, and any employees or Authorized Contractors of any of the foregoing.
- 2.24. **“System(s)”** means any underlying or related platforms and infrastructure, and related Deliverables, as may be further defined and described in the RFP, Proposal, Special Terms and Conditions attached hereto and labeled “Application Services/System(s) Description and related Fees,” and related Purchasing Instruments, including any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the Agency’s specific needs or use.
- 2.25. **“Third Party”** means a person or entity (including any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.
- 2.26. **“Third Party Intellectual Property”** shall mean intellectual property, including Third Party Software, licensed, made, conceived, or developed by a Third Party and provided or used by or on behalf of the Agency or Vendor, as applicable, including:
 - 2.26.1. As it relates to intellectual property provided to the Agency by Vendor, intellectual property comprising or embedded in the Application Services, System(s), or any other Services or Deliverables provided by Vendor under this Agreement, including any Third Party Software used by or on behalf of Vendor to host the Application Services or System(s);
 - 2.26.2. As it relates to intellectual property provided to Vendor by the Agency, intellectual property comprising or embedded in any Customer Property, including any Third Party Software licensed to the Agency and accessed or used by Vendor in transitioning the Agency from legacy applications and systems to the Application Services and System(s) provided by Vendor hereunder.
- 2.27. **“Third Party Software”** means any software owned or licensed by a Third Party.

- 2.28. **“Users”** means the State Users and any other users of the Application Services or System(s), including external entities or individuals who may enter, upload, download, import, or otherwise access data or information into the System(s) through public-facing web interfaces.
- 2.29. **“Value-Added Services”** means products, equipment, hardware, Software, or services the Agency procures through Vendor, directly or indirectly, hereunder, including goods or services:
- 2.29.1. Which may have been expressly identified in the RFP or Proposal as optional goods or services available for purchase hereunder; or
- 2.29.2. Which are otherwise generally deemed incidental to the total transaction.
- 2.30. **“Vendor”**, in addition to its meaning in the CD&E, shall, unless the context clearly requires the contrary, be deemed to include Vendor Contractors, where applicable, and Vendor Personnel.
- 2.31. **“Vendor Personnel”** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Services or Deliverables under this Agreement.
- 2.32. **“Vendor Contractor(s)”** means any of Vendor’s authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Services or Deliverables under this Agreement.
3. **Services and Deliverables.**
- 3.1. **Performance.**
- 3.1.1. *Generally.* Vendor shall commence, complete, and deliver all work and provide all Services, Deliverables, the Application Services, and System(s) as defined by, described by, and in accordance with the terms, conditions, requirements, Specifications, and Acceptance Criteria forth in this Agreement, including any Special Terms and Conditions, any Purchasing Instrument(s) executed by the Agency hereunder, the RFP, the Proposal, and any Service Level Agreement or any related attachments or documents attached hereto or associated herewith, including a “project plan(s)” or other similarly captioned document. Except as otherwise set forth herein or in a Service Level Agreement attached as Special Terms and Conditions hereto, performance standards, monitoring, and review provisions applicable to specific projects are as set forth in the applicable Purchasing Instrument.
- 3.1.2. *Purchasing Instruments.*
- 3.1.2.1. *Generally.* The Agency and Vendor may execute individual Purchasing Instrument(s) identifying specific Services or Deliverables to be purchased and provided hereunder and defining related Acceptance Criteria, Specifications, or terms and conditions associated with the performance and provisioning of such Services or Deliverables. Individual Purchasing Instruments will be effective and become valid and enforceable only when signed by both the Agency and Vendor. Once a Purchasing Instrument has been executed,

Vendor will carry out and complete the duties and responsibilities set forth in the applicable Purchasing Instrument in accordance with the terms, conditions, requirements, Specifications, and Acceptance Criteria set forth in this Agreement, including any Special Terms and Conditions, the Purchasing Instrument, the RFP, the Proposal, and any Service Level Agreement or any related attachments or documents attached hereto or associated herewith, including a “project plan(s)” or other similarly captioned document.

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

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

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

3.1.2.3.2. *Vendor's Response.* Vendor shall submit to the Agency any proposed modifications to the Purchasing Instrument and a firm cost proposal, if applicable, for the requested change order within five (5) business days of receiving the Agency's change order request.

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

3.1.3. *Delivery.*

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

- 3.1.3.2. *Documentation.* Vendor acknowledges and agrees that it or Vendor Contractors shall, at no charge to the Agency, deliver and provide to the Agency all documentation related to the Applications Services, System(s), Software or other Deliverable(s) that are created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor directly or indirectly, hereunder, unless otherwise agreed to by the Agency in writing.
- 3.1.4. *Value-Added Services.* The Agency may procure Value-Added Services through Vendor. Vendor represents and warrants the following with respect to all Value-Added Services:
 - 3.1.4.1. *Equipment or hardware.* Any equipment or hardware provided hereunder will be new and unused; Title to such equipment or hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions; the Agency's use and possession of such equipment or hardware will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Vendor; and such equipment or hardware will be free of any rightful claim of any Third Party based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.
 - 3.1.4.2. *Software.* Vendor shall ensure that all Third Party Software provided hereunder, including Third Party Software comprising or embedded in the Application Services, System(s), or related Deliverables is licensed to the Agency pursuant to a license agreement, the terms and conditions of which are acceptable to the Agency.
 - 3.1.4.3. *Third Parties.* Vendor shall take all commercially reasonable action necessary to ensure the Agency is able and entitled to receive and enjoy all warranties, indemnities, or other benefits associated with Value-Added Services provided hereunder. At the Agency's written request and to the extent contractually permitted by a related license agreement, Vendor shall assign to the Agency all of licensor's and manufacturer's warranties, indemnities, or other associated benefits pertaining to such Value-Added Services under any related license agreement or other agreement between Vendor and the applicable Third Party.

3.2. Application Services/System.

- 3.2.1. *Grant of License.* Subject to the terms and conditions of this Agreement, Vendor grants to the Agency, the State of Iowa, State Users, and their Authorized Contractors for the Agency or the State of Iowa's governmental and business activities and purposes, including for the provisioning of information and services to State Users, Users, and, to the extent federal funds are used to pay for the Application Services or System(s), in whole or in part, the federal government, during the Term a non-exclusive license to: (i) access, use, and, to the extent applicable, maintain and support, the Application Services, System(s), and related Deliverables; and (ii) access, use, reproduce, and distribute documentation.

- 3.2.2. *Implementation/Configuration.* Vendor will implement, modify, and configure the Application Services, System(s), and related Deliverables in accordance with the terms and conditions of applicable Purchasing Instrument(s), the RFP, and Proposal, and any related “project plan(s)” or other similarly captioned document.
- 3.2.3. *Not Required to Accept or Install Enhancements.* Vendor shall not condition the Agency’s rights or Vendor’s obligations under this Agreement, or any other contract, on the Agency accepting or installing any enhancements related to the Application Services, System(s), or related Deliverables.

4. Compensation and Additional Rights and Remedies.

- 4.1. Pricing/Compensation. The fees for the Services, Deliverables, Application Services, and System shall be in accordance with the RFP and Proposal and as set forth:
 - 4.1.1. In the case of the Application Services and System(s), in the Special Terms and Conditions attached hereto and labeled “Application Services/System(s) Description and related Fees”; and
 - 4.1.2. In the case of all other Services and Deliverables, in the applicable Purchasing Instrument(s).

Failure of the Agency to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of any Services or Deliverables, including the Application Services or System(s), so long as payment of such undisputed fees is made within the applicable cure period. For the avoidance of doubt, in the event of any dispute related to fees, Vendor shall continue to perform and provide Services and Deliverables, including the Application Services or System(s), until such dispute has been adjudicated by a court of competent jurisdiction or other agreed-upon governing body.

- 4.2. No Additional Fees. Other than as permitted by Section 4.1 (Pricing/Compensation), the Agency shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement or any Purchasing Instrument(s). For the avoidance of doubt, there shall be no reimbursable expenses associated with this Agreement, and Vendor shall be solely responsible for all other costs, charges, and expenses it incurs in connection with this Agreement, including equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, travel and lodging, and all other operational and administrative costs and expenses.
- 4.3. Satisfactory Performance. Vendor is not entitled to payment for any Services or Deliverable(s), including the Application Services or System(s), in whole or in part, provided under this Agreement or any Purchasing Instrument(s) if the Agency reasonably determines that such Services or Deliverable(s) have not been satisfactorily or completely delivered or performed in accordance with the Acceptance Criteria or Specifications set forth in the applicable Purchase Instrument, or that such Services or Deliverable(s) fails to meet or conform to any applicable Acceptance Criteria or Specifications or that there is a material Deficiency or Error with respect to such Deliverable(s) or Services.
- 4.4. Effect of Purchasing Instruments. Unless otherwise agreed upon in writing, in no event shall the Agency be obligated to pay Vendor any fees, costs, compensation, or other amounts in excess of the amounts consistent with the RFP or the Proposal for any Services

or Deliverable(s), including the Application Services and System(s). In addition, in no event shall the Agency be obligated to pay Vendor any fees, costs, compensation, or other amounts in excess of the amounts set forth in an applicable Purchasing Instrument or Special Terms and Conditions attached hereto and labeled "Application Services/System(s) Description and related Fees," for any one or more Services or Deliverable(s), including the Application Services or System(s), unless the Agency agrees to pay such fees, costs, compensation, or other amounts pursuant to a duly executed Change Order or written amendment to the applicable Purchasing Instrument or Special Terms and Conditions.

- 4.5. Payment does not Imply Acceptance. Payment, including final payment, shall not be construed as acceptance of any Services or Deliverables with Deficiencies, Errors, or incomplete work, and Vendor shall remain responsible for full performance in compliance with the terms and conditions of this Agreement.
- 4.6. Invoices. Upon receipt of written notice of Acceptance from the Agency with respect to one or more Services or Deliverable(s), or in the frequencies set forth in the applicable Purchasing Instrument or, in the case of the Application Services and System(s), in the Special Terms and Conditions attached hereto and labeled "Application Services/System(s) Description and related Fees," Vendor shall submit an invoice to the Agency requesting payment of the fees or other compensation to which it is entitled under Section 4.1(Pricing/Compensation), less any Retained Amount(s) to be withheld in accordance with Section 4.7 (Retention) or other applicable offsets. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges, or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Agency. The Agency shall verify Vendor's performance/provisioning of Services or Deliverable(s) outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code section 8A.514 and corresponding implementing rules, regulations, and policies. The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Agency shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Agency believes the invoice is inaccurate or incorrect in any way.
- 4.7. Retention. To secure Vendor's performance under this Agreement, the Agency may retain 15% of the fees or other compensation associated with each Deliverable provided under a Purchasing Instrument ("**Retained Amounts**") until all Deliverables under such Purchasing Instrument have been supplied/provided and the Agency has given its Final Acceptance. Retained Amounts shall be payable upon the Agency's delivery of written notice of Final Acceptance, subject to the terms and conditions hereof.
- 4.8. Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Agency the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Vendor or notification by the Agency of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Agency under this Section 4.8 (Erroneous Payments and Credits), the Agency may charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount otherwise allowed by law, whichever is greater. The Agency may, in its sole discretion, elect to have Vendor apply

any amounts due and owing the Agency under this Section 4.8 (Erroneous Payments and Credits) against any amounts payable by the Agency under this Agreement.

- 4.9. Set-off Against Sums Owed by Vendor. In the event Vendor owes the Agency any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Agency may set off such sum against any sum invoiced to the Agency by Vendor in the Agency's sole discretion. Any amounts due the Agency as damages may be deducted by the Agency from any money or sum payable by the Agency to Vendor pursuant to this Agreement or any other agreement between Vendor and the Agency.
- 4.10. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the Agency or work stoppage by Vendor, in the event the Agency determines:
- 4.10.1. Vendor has failed to perform any of its material duties or obligations as set forth in this Agreement; or
 - 4.10.2. Any Deliverable, the Application Services, or System(s) has failed to meet or conform to any applicable Acceptance Criteria or Specification(s) or contains or is experiencing a material Deficiency or Error(s).
- No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Agency under this Agreement.
- 4.11. Correction/Cure. The Agency may correct any Deficiencies or Errors with respect to any Deliverable(s), the Application Services, or System(s), or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies or Errors as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a written notice of default from the Agency. The Agency may procure the Deliverable(s) reasonably necessary to correct any Deficiencies or Errors or cure any Vendor default, and RSM will refund the portion of fees for the nonconforming Deliverables. In addition, Vendor shall reasonably cooperate with the Agency or any Third Parties retained by the Agency which assist in curing such default, including by allowing access to any pertinent materials, work product, or intellectual property of Vendor's.
- 4.12. Error Correction. With respect to each written notice from the Agency to Vendor during the Term that notifies Vendor that any Deliverable(s), the Application Services, or System(s) provided by Vendor, including those previously accepted by the Agency, contains or experiences a Deficiency or Error, Vendor shall, at no cost to the Agency, promptly:
- 4.12.1. Correct the Deficiency or Error and repair the affected Deliverable(s), Application Services, or System(s); and
 - 4.12.2. Provide the Agency with all necessary and related materials related to such repaired or corrected Deliverable(s), Application Services, or System(s) including, to the extent applicable, master program disks, or other media acceptable to the Agency, and related documentation.
- 4.13. Repayment Obligation. In the event that any State of Iowa 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, Vendor will refund to the Agency the full amount of any claim

disallowed (or the amount of funds expended in violation of such applicable laws). If the State of Iowa or any federal agency concludes Vendor has been paid for any cost that is unallowable, unallocable, or unreasonable under this Agreement, Vendor will refund the Agency for such cost. Vendor shall pay to the Agency all amounts for which the Vendor is liable under this Section 4.13 (Repayment Obligation) within ten (10) business days of receiving the Agency's written demand or written notice. The Agency may withhold any payment under this Agreement if Vendor fails to timely make any payment required by this Section 4.13 (Repayment Obligation).

- 4.14.** Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 4 (Compensation and Additional Rights and Remedies) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

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

- 5.1.** Acceptance Testing. All Deliverables, the Application Services, and the System(s) shall be subject to the Agency's Acceptance Testing and Acceptance, as set forth in the applicable Purchasing Instrument(s). If applicable, upon completion of all work to be performed by Vendor with respect to any Deliverable or group of Deliverables, the Application Services, or the System(s), Vendor shall deliver a written notice to the Agency confirming that the foregoing meets and conforms to applicable Acceptance Criteria and is ready for the Agency to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable(s), Application Services, and System(s) to determine that it meets and operates in accordance with applicable Acceptance Criteria prior to delivering such notice to the Agency. At the Agency's request, Vendor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency. Within a reasonable period of time after the Agency has completed its Acceptance Testing, but in no event later than fifteen (15) days unless a longer period is mutually agreed-upon in the Purchasing Instrument, the Agency shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable, the Application Services, or System(s), or any portion thereof, evaluated during such Acceptance Testing. If the Agency determines that a Deliverable(s), the Application Services, or the System(s), in whole or in part, satisfies its Acceptance Tests, the Agency shall provide Vendor with written notice of Acceptance with respect to such Deliverable(s), the Application Services, and System(s) within fifteen (15) days of receipt of notice of completion unless a longer period is mutually agreed-upon in the Purchasing Instrument. If the Agency determines that a Deliverable(s), the Application Services, or System(s), in whole or in part, fails to satisfy its Acceptance Tests, the Agency shall provide Vendor with written notice of Non-Acceptance with respect to such Deliverable(s), the Application Services, and System(s) within fifteen (15) days of receipt of notice of completion unless a longer period is mutually agreed upon in the Purchasing Instrument. In the event the Agency provides notice of Non-Acceptance to Vendor with respect to any Deliverable(s), the Application Services, and System(s), Vendor shall correct and repair such Deliverable(s), the Application Services, and System(s) and submit it to the Agency within ten (10) days of Vendor's receipt of notice of Non-acceptance so the Agency may re-conduct its Acceptance Tests with respect to such Deliverable(s), the Application Services, or System(s). In the event the Agency determines after re-conducting its Acceptance Tests such Deliverable(s), Application Services, and System(s) continue to

fail to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to:

- 5.1.1. Require Vendor to correct and repair such Deliverable(s), Application Services, and System(s) within such period of time as the Agency may specify in a written notice to Vendor;
 - 5.1.2. Refuse to accept such Deliverable(s), Application Services, or System(s) without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such nonconforming portion of the Deliverable(s), the Application Services, or System(s), or receive a refund of any fees or amounts already paid with respect to such nonconforming portion of the Deliverable(s), Application Services, or System(s);
 - 5.1.3. Accept such Deliverable(s), the Application Services, or System(s) on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Agency's satisfaction, the Deficiencies or Errors present therein and any reduced value or functionality of such Deliverable(s), the Application Services, or System(s), or the costs likely to be incurred by the Agency to correct such Deficiencies or Errors; or
 - 5.1.4. Terminate the applicable Purchasing Instrument or seek any and all available remedies, including damages. Notwithstanding any other provisions of this Agreement related to termination, the Agency may terminate a Purchasing Instrument in its entirety pursuant to this Section 5.1.4 without providing Vendor any notice or opportunity to cure.
- 5.2. The Purchasing Entity's right to exercise the foregoing rights and remedies, including termination of the applicable Purchasing Instrument, shall remain in effect through notice of Final Acceptance of all Deliverables. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Purchasing Entity's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any Deficiency or Error is later discovered with respect to such Deliverable(s). Project Management and Reporting.
- 5.2.1. *Vendor or Project Manager.* Vendor shall designate, in writing, a Project Manager acceptable to the Agency. Vendor will assign a Project Manager of a management level sufficient to ensure timely responses from all Vendor Personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the Agency prior to his or her appointment as Vendor's Project Manager. Vendor represents and warrants that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her or him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Agency's site as needed during the course of work and will be available either in person, by telephone, or by email to respond promptly during the business day to inquiries from the Agency.

- 5.2.2. *Review Meetings.* Vendor's Project Manager shall meet weekly with the Agency's project manager and representatives, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor or performance issues. At each review meeting, Vendor's Project Manager shall provide a status report, which shall include, at minimum, the information described in Section 5.2.3 (Reports) and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any Party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance of this Agreement.
- 5.2.3. *Reports.* Vendor shall provide the Agency with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Services or Deliverables, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Agency may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Agency's approval.
- 5.2.4. *Problem Reporting Omissions.* The Agency's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity the Agency may have. The Agency's failure to identify the extent of a problem, Deficiency, or Error, or the extent of damages incurred as a result of a problem, Deficiency, or Error, shall not act as a waiver of performance or constitute Acceptance under this Agreement.

6. Ownership and Intellectual Property.

- 6.1. Ownership of Vendor Materials. Except as specifically granted in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Vendor shall own all administrative records, work papers, proprietary information, processes, methodologies, techniques, ideas, concepts, trade secrets, know-how and software that were independently and exclusively developed by Vendor prior to the Effective Date of the Agreement, as well as the same that are of general applicability to Vendor's business independently and exclusively developed by Vendor after the Effective Date of the Agreement. ("**Vendor Materials**"). Further, except where a more specific grant of license is set forth in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, with respect to all Deliverables, the grant of license set forth in Section 3.2.1 (Grant of License) shall extend to all Vendor Materials provided hereunder. The intent of this clause is to recognize the Purchasing Entity's right to use and distribute contractual Deliverables, while also recognizing Vendor's right to its continued use of Vendor Materials during and after the Agreement.
- 6.2. Ownership and Assignment of Customer-Owned Deliverables. Vendor and Vendor Contractors hereby irrevocably assign, transfer, and convey to the Agency all right, title and interest in and to Customer-Owned Deliverables. Vendor represents and warrants that the Agency shall acquire good and clear title to all Customer-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including

Vendor Contractors and Vendor Personnel. Vendor, Vendor Contractors, and Vendor Personnel shall not retain any property interests or other rights in or to Customer-Owned Deliverables and shall not use any Customer-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency commissioning such Deliverables and the payment of such royalties or other compensation as the Agency deems appropriate. Immediately upon the request of the Agency, Vendor will deliver to the Agency or destroy, or both, at the Agency's option, all copies of any Customer-Owned Deliverables in the possession of Vendor.

- 6.3. Waiver. To the extent any of Vendor's, Vendor Contractor's, or any Vendor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights or any rights of attribution or integrity, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the Agency's rights in and to Customer-Owned Deliverables.
- 6.4. Acknowledgement. Vendor acknowledges and agrees that the Agency, as owner and assignee of Customer-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation:
 - 6.4.1. Obtain, secure, file, and apply for any legal protection necessary to secure or protect any rights in and to Customer-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto;
 - 6.4.2. Adapt, change, modify, edit, or otherwise use Customer-Owned Deliverables as the Agency sees fit, including in combination with the works of others, prepare derivative works based on Customer-Owned Deliverables, and publish, display, perform, host, and distribute throughout the world any Customer-Owned Deliverable(s) in any medium, whether now known or later devised, including any digital or optical medium; and
 - 6.4.3. Make, use, sell, license, sublicense, lease, or distribute Customer-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party, including Vendor Contractors or Vendor Personnel.
- 6.5. Further Assurances. At the State of Iowa's or Agency's request, Vendor will, both during and after the termination or expiration of this Agreement, execute and deliver such instruments, provide all facts known to it, and take such other action as may be requested by the State of Iowa or Agency to:
 - 6.5.1. Establish, perfect, or protect the Agency's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers, and conveyances set forth in Section 6.2 (Ownership and Assignment of Customer-Owned Deliverables); and
 - 6.5.2. Obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof.

In the event the Agency is unable, after reasonable effort, to secure Vendor's, Vendor Contractor's, or any Vendor Personnel's signature on any letters patent, copyright, or other analogous protection relating to the Customer-Owned Deliverables, for any reason

whatsoever, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably designates and appoints the Agency and its duly authorized officers, employees, and agents, as their agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Vendor.

- 6.6. Third Party Intellectual Property. Except as otherwise agreed to by the Parties in writing, in the event a Deliverable(s) is comprised of Third Party Intellectual Property, Vendor shall ensure such Deliverables is licensed to the Agency pursuant to a license agreement, the terms and conditions of which are acceptable to the Agency. Unless otherwise agreed to by the Agency in writing, such license shall be an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the Third Party Intellectual Property, and to authorize others to do the same on the Agency's behalf, including its Authorized Contractors.
- 6.7. Rights of the Federal and State Government. If all or a portion of the funding used to pay for Customer-Owned Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights, including a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes, the Customer-Owned Deliverables developed under this Agreement and the copyright in and to such Customer-Owned Deliverables.
- 6.8. Customer Property. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement and in compliance with Agency's security and confidentiality requirements. Customer Property shall at all times remain the property of the Agency or applicable Third Party owning Customer Property that has been licensed to the Agency. Vendor, Vendor Contractors, Vendor Personnel and the Application Services, System(s), or related Deliverables shall comply with any and all the license terms, conditions, or restrictions applicable to any Customer Property that has been licensed to the Agency or otherwise made available or accessible to the Agency or Vendor by a Third Party, including to the extent the Application Services, System(s), or related Deliverables must interface, integrate, or connect to such Customer Property. Vendor shall indemnify and hold harmless the Agency and its officers, directors, employees, officials, and agents from and against any and all unaffiliated third-party claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs, and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Vendor's, Vendor Contractor's, or Vendor Personnel's, or the Application Services, System(s), or related Deliverables breach of any license terms, conditions, or restrictions applicable to, or violation or misappropriation of any intellectual property rights or interests in, any Customer Property that has been licensed to the Agency or otherwise made available or accessible to the Agency or Vendor by a Third Party.
- 6.9. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 6 (Ownership and Intellectual Property) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement

regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

7. Representations, Warranties, and Covenants.

- 7.1. Deliverables Free of Deficiencies.** Excluding Third-Party products, Vendor represents and warrants that the Deliverables, Application Services, and System(s), in whole and in part, shall: (i) be free from material Deficiencies and Errors; and (ii) meet, conform to and operate in accordance with all Acceptance Criteria and in accordance with the applicable Purchase Instrument. During the Term, Vendor shall, within ten (10) days of receiving written notice of such Deficiencies, Errors, or failures from the Agency and at its expense, repair, correct, or replace any Deliverable(s), the Application Services, and System(s) that contains or experiences material Deficiencies or Errors or fails to meet, conform to, or operate in accordance with Acceptance Criteria or Specification(s). The foregoing shall not constitute an exclusive remedy under this Agreement, and the Agency shall be entitled to pursue any other available contractual, legal, or equitable remedies. During the Term, Vendor shall be available at all reasonable times to assist the Agency with questions, problems, and concerns about the Deliverable(s), the Application Services, and System(s); to inform the Agency promptly of any known Deficiencies or Errors in any Deliverable(s), the Application Services, and System(s); repair and correct any Deliverable(s), the Application Services, and System(s) not performing in accordance with the warranties contained in this Agreement, if in receipt of notice of Deficiencies or Errors in accordance with this Section 7; and provide the Agency with all necessary materials and any related Services with respect to such repaired or corrected Deliverable(s), the Application Services, and System(s). Acceptance Testing will not in any way relieve Vendor of its responsibilities to correct any material Deficiency or Error.
- 7.2. Reserved.**
- 7.3. Quiet Enjoyment.** Vendor represents and warrants that: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide Deliverables, the Application Services, and System(s) to the Agency hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed the Agency hereunder without violating any rights of any Third Party; (ii) it has not previously and will not grant any rights in any Deliverables, the Application Services, and System(s) to any Third Party that are inconsistent with the rights granted to the Agency herein; and (iii) the Agency shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables, the Application Services, and System(s) without suit, disruption, or interruption.
- 7.4. Intellectual Property.** Vendor represents and warrants that: (i) the Deliverables, the Application Services, and System(s) (and all intellectual property rights therein and related thereto); and (ii) the Agency's use of, and exercise of any rights with respect to, the Deliverables, the Application Services, and System(s) (and all intellectual property rights therein and related thereto), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress, or other intellectual property right, proprietary right, or personal right of any Third Party. Vendor further represents and warrants to their knowledge there is no pending or threatened claim, litigation, or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret related to any Deliverables, the Application Services, and System(s). Vendor shall inform the Agency in writing immediately upon becoming aware of any actual 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, Vendor shall, at the Agency's written request and at Vendor's sole expense: (i) procure for the Agency the right or license to continue to use the Deliverable(s), the Application Services, and System(s) at issue, or relevant aspect thereof; (ii) replace the infringing, violating, or misappropriated aspects of such Deliverable(s), the Application Services, and System(s) with a functionally equivalent replacement; (iii) modify or replace the affected portion of the Deliverable(s), the Application Services, and System(s) with a functionally equivalent or superior Deliverable(s), Application Services, and System(s) free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable(s) at issue and refund to the Agency all fees, charges, and any other amounts paid by the Agency under this Agreement or any related agreement with respect to such Deliverable(s) or, in the case of the Application Services and System(s), accept an equitable downward adjustment of the fees, charges, and any other amounts paid by the Agency under this Agreement or any related agreement to the extent such infringement, violation, or misappropriation prevents the Agency's use of an affected aspect of the Application Services or System(s). In addition, Vendor agrees to indemnify and hold harmless the Agency and its officers, directors, employees, officials, and agents against any unaffiliated third party claims as provided in the Indemnification section of this Agreement, including for any breach of the representations and warranties made by Vendor in this Section 7.4 (Intellectual Property). The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency under this Agreement or otherwise and shall survive termination of this Agreement.

7.5. Workmanlike Manner. Vendor represents, warrants, and covenants that all Services to be performed under this Agreement shall be performed in a professional, competent, diligent, and workmanlike manner by knowledgeable, trained, and qualified personnel, all in accordance with the terms and conditions of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. If the Agency notifies Vendor in writing of any Services performed in violation of this standard within thirty (30) days of such nonconforming performance, or in such other period as mutually agreed upon in a Purchasing Instrument, Vendor shall re-perform the Services at no cost to the Agency, such that the Services are rendered in the above-specified manner, or if Vendor is unable to perform the Services as warranted, Vendor shall reimburse the Agency any fees or compensation paid to Vendor for the unsatisfactory portion of the Services.

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

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

time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.

- 7.6.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
- 7.6.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 7.6.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 7.6.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.1, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
- 7.6.6. While using the Agency systems, all applicable I.T. Governance Document(s).
- 7.6.7. To the extent a portion of the funding used to pay for the Deliverables, Application Services, or System(s) is being provided through a grant from the federal government, any terms or conditions required to be included in a contract between the Agency and a contractor pursuant to applicable federal laws, regulations, circulars, and bulletins, which terms and conditions are incorporated by reference into this Agreement as if fully set forth herein and contractual obligations of Vendor.
- 7.6.8. IRS Pub 1075.
- 7.6.9. Iowa Code sections 422.20 and 422.72.

Vendor shall take such steps as necessary to ensure Vendor Contractors and Vendor Personnel are bound by the terms and conditions contained in this Section 7.6 (Compliance with Law). Notwithstanding anything in this Agreement to the contrary, Vendor, Vendor Contractors, and Vendor Personnel's failure to fulfill any requirement set forth in this Section 7.6 (Compliance with Law) shall be regarded as a material breach of this Agreement the Agency may cancel, terminate, or suspend, in whole or in part, this Agreement or any Purchasing Instruments executed hereunder. In addition, the Agency may declare Vendor or Vendor Contractors ineligible for future Agency contracts in accordance with authorized procedures or Vendor or Vendor Contractors may be subject to other sanctions as provided by law or rule.

- 7.7. No Conflicts. Vendor represents, warrants, and covenants that no relationship existed at the time of the formation of this Agreement, or will exist during the Term of the Agreement, between Vendor, Vendor Contractors, or Vendor Personnel and the Agency or the State of Iowa or any of its employees or Authorized Contractors that is or may constitute a conflict of interest or appearance of impropriety, or that would conflict in any manner or degree with the performance of its obligations under this Agreement. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement and any Purchasing Instruments executed hereunder, and Vendor, Vendor Contractors, and Vendor Personnel shall not engage in or permit any Third Party to engage in any conduct that would violate that chapter.
- 7.8. Up to Date on Payments. Vendor represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the State of Iowa, including the

payment of taxes and employee benefits, and covenants and warrants it will not become so during the Term, or any extensions thereof.

- 7.9. Documentation. Vendor represents, warrants, and covenants that during the Term, all documentation will accurately reflect the operation of any Deliverable(s) and the Application Services for their intended purposes.
- 7.10. Reserved.
- 7.11. Cumulative Warranties. Except to the extent otherwise provided herein, Vendor's warranties provided in this Section 7 (Representations, Warranties, and Covenants) are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Agency.
- 7.12. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 7 (Representations, Warranties, and Covenants) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

8. Indemnification.

- 8.1. Generally. Vendor and its successors and permitted assigns shall indemnify and hold harmless the Agency and their employees, officers, board members, agents, representatives, and officials ("**Indemnitees**") from and against any and all third party claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs, and any other expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses, and attorney fees of other counsel retained by any Indemnatee) directly or indirectly related to, resulting from, or arising out of this Agreement, including any third-party claims related to, resulting from, or arising out of:
 - 8.1.1. Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor, directly or indirectly, of any statement, representation, warranty, or certification in connection with this Agreement that is false, deceptive, or misleading;
 - 8.1.2. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, Vendor Contractors, or Vendor Personnel;
 - 8.1.3. Vendor's, Vendor Contractor's, or Vendor Personnel's performance or attempted performance of this Agreement;
 - 8.1.4. Vendor, Vendor Contractors, or Vendor Personnel's failure to comply with any applicable local, state, and federal laws, rules, ordinances, regulations, standards, or orders in the performance of this Agreement;
 - 8.1.5. Any failure by Vendor or Vendor Contractors to make all reports, payments, withholdings, or provide any insurance required by federal and state law, including with respect to Social Security, workers compensation, employee income and other taxes, fees, or costs required by Vendor or Vendor Contractors to conduct business in the State of Iowa;

8.1.6. 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(s), the Application Services, the System(s), or any use, access to, or the exercise of any rights with respect to any of the foregoing (“**Indemnified Items**”) infringes, violates, or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party (collectively “**Claim(s)**”).

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

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

8.2.2. Promptly procure for the Agency the right to continue using the Deliverables.

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

8.3. Vendor’s duties, obligations, and liabilities as set forth in this Section 8 shall survive termination of this Agreement.

9. Termination.

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

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

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

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

9.1.4. Vendor’s authority to do business here or elsewhere is threatened or lost,

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

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

9.1.7. Vendor’s actions may expose the Agency to material liability.

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

- 9.2. Termination by Vendor. Vendor may terminate an applicable Purchasing Instrument or this Agreement upon written notice of the Agency's breach of any material term of this Agreement if the breach is not cured within 60 days of the Agency's receipt of Vendor's written notice. In addition, Vendor may terminate this Agreement and/or any Purchase Instrument upon written notice if circumstances arise that in its judgment would cause its continued performance to result in a violation of law, a regulatory requirement, a legal process, or applicable professional or ethical standards.
- 9.3. Termination for Convenience. Following 30 days' written notice, the Agency or applicable Governmental Entity may terminate a Purchasing Instrument in whole or in part without cause. The Agency may terminate this Agreement in whole or in part upon 30 days' written notice without cause.
- 9.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, the Agency may terminate this Agreement or a Purchasing Instrument, in whole or in part, without penalty or liability and without any advance notice if:
- 9.4.1. the Agency determines that it has not been appropriated sufficient funds or funds have been reduced, unallocated, or delayed such that the Agency cannot, in the Agency's sole discretion, meet its obligations,
 - 9.4.2. the Agency's authority has been withdrawn or materially altered, or its duties, programs or responsibilities are modified or materially altered, or
 - 9.4.3. there is a judicial decision that materially or adversely affects the Agency's ability to fulfill obligations under this Agreement or any applicable Purchasing Instrument.
- 9.5. Limitation of Payment Obligations. If the Agency terminates this Agreement or a Purchasing Instrument for cause, the Agency retains the right to contest amounts that remain unpaid as of the date of termination. In all other termination contexts, the Agency will pay those amounts due for goods or services accepted by the Agency for which the Agency is obligated to pay up to the date of termination to the extent that funds to make these payments are legally available. Payment is contingent on submission and acceptance of invoices for sums due. Under no circumstances will the Agency be liable for sums not expressly owed under the terms of the Agreement or a Purchasing Instrument.
- 9.6. Vendor's Termination or Expiration Duties. As it relates to this Agreement or any associated Purchasing Instrument, upon receipt of a notice of termination, upon expiration, or upon request of the Agency, Vendor must:
- 9.6.1. cease work under the Agreement or Purchasing Instrument and take all appropriate actions to limit disbursements and minimize costs;
 - 9.6.2. provide a report to the Agency addressing the Agency's information needs, including the status of all work performed under the Agreement;
 - 9.6.3. cease using and return any Customer Property or Customer-Owned Deliverables;
 - 9.6.4. comply with the Agency's directions concerning Customer Data;
 - 9.6.5. return or refund any Agency payments for goods or services not provided to the Agency; and
 - 9.6.6. provide all Deliverables to the extent the Agency has a property interest in the Deliverable.

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

Vendor shall have no further responsibility for work product delivered under this subsection which is designated as incomplete as of the date of termination

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

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

9.7.1.1. 4 (Compensation and Additional Rights and Remedies);

9.7.1.2. 6 (Ownership and Intellectual Property);

9.7.1.3. 7 (Representations, Warranties, and Covenants);

9.7.1.4. 8 (Indemnification);

9.7.1.5. 9 (Term and Termination);

9.7.1.6. 10 (Confidentiality);

9.7.1.7. 11 (Security/Privacy, Business Continuity, and Disaster Recovery);
and

9.7.1.8. 12 (Contract Administration).

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

10. Confidentiality.

10.1. Vendor's Treatment of Confidential Information.

10.1.1. *Limited Access.* Customer Data shall at all times remain the property of the Agency, and the Agency shall retain exclusive rights thereto and ownership thereof. Only those Vendor Contractors and Vendor Personnel who have a "need to know" in order to perform the Services shall have access to Customer Data or Agency confidential information. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Data solely to the extent necessary to carry out their duties under the Agreement. Vendor, Vendor Contractors, or Vendor Personnel shall presume all Customer Data is considered confidential, hold all Customer Data in the strict confidence, and use and permit use of Customer Data solely for the purposes of providing Services, Deliverables, the Application Services, and System(s) under this

Agreement, subject to any restrictions set forth herein or in any state and federal laws, rules, regulations, standards, and orders applicable either during the Term or thereafter. Vendor, Vendor Contractors, and Vendor Personnel shall not gather, store, log, archive, use, or otherwise retain Customer Data in any manner other than as expressly authorized by this Agreement or applicable Purchase Instrument and will not disclose, distribute, sell, commercially or politically exploit, share, rent, assign, lease, or otherwise transfer or disseminate Customer Data to any Third Party, except as expressly permitted hereunder or as Vendor may be expressly directed in advance by the Agency in writing. Vendor, Vendor Contractors, and Vendor Personnel shall not remove from any Agency facilities or retain a copy of any Customer Data unless such removal or retention is necessary to provide or perform Services, Deliverables, the Application Services, or System(s) to fulfill their obligations under this Agreement or is otherwise approved by the Agency in writing. Vendor will immediately report the unauthorized disclosure of Customer Data to the Agency.

- 10.1.2. *Destruction or Return of Customer Data.* Upon completion of duties under this Contract or upon the specific direction of the Department, the contractor shall confirm that confidential information processed and any output generated during the performance of duties under this Contract has been completely purged from all information storage components, including, but not limited to data center facility, laptops, computers, and other storage devices. If immediate purging of all information storage components is not possible, the contractor shall confirm that any confidential information remaining in any storage component shall be safeguarded to prevent unauthorized disclosures until it has been purged. Once all confidential information processed and output generated has been completely purged, the contractor shall submit a signed confirmation to the Agency to that effect.
 - 10.1.2.1. To the extent Vendor is required to destroy Customer Data pursuant to this Section 10.1.2 (Destruction or Return of Customer Data) or any other part of this Agreement, Customer Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology (“NIST”)-approved methods.
 - 10.1.2.2. Notwithstanding the foregoing, the parties acknowledge that in the case of Confidential Information communicated through email or which has been scanned or otherwise stored electronically by Contractor, Contractor’s deletion of (i) email messages from individual mailboxes, or (ii) documents from network or individual hard drives will not result in the removal of all copies of such Confidential Information from Contractor’s back-up or archival systems. Any Confidential Information retained will remain subject to the confidentiality obligations of this Agreement and will be destroyed in accordance with Contractor’s record retention policies. Neither Contractor’s retention of archival copies, nor its failure to remove copies from its back-up or archival systems, will be deemed a breach of this Agreement.

- 10.1.3. *Compelled Disclosures.* In the event that a subpoena or other legal process is served upon the contractor for records containing confidential information, the contractor shall, if legally permissible, promptly notify the Agency and cooperate with the Agency in any lawful effort to protect the confidential information.

10.2. Treatment of Vendor's Confidential Information.

- 10.2.1. *Safeguarding Obligation.* Except as provided or contemplated herein, and subject to applicable state, federal, or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), the Agency shall not intentionally disclose Vendor's Confidential Information to a Third Party (excluding the Agency's Authorized Contractors) without the prior written consent of Vendor.
- 10.2.2. *Destruction or Return of Vendor's Confidential Information.* Upon termination or expiration of this Agreement or an applicable Purchasing Instrument, the Agency shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items subject to any continuing licenses inuring to the benefit of the Agency hereunder or that are required for use of any Customer-Owned Deliverables or other Deliverables to which the Agency has a continued right to use).
- 10.2.3. *Compelled Disclosures.* Notwithstanding and in addition to the foregoing, the Agency may disclose Vendor's Confidential Information:
- 10.2.3.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative, or regulatory processes;
 - 10.2.3.2. Pursuant to any applicable laws, rules, or regulations;
 - 10.2.3.3. If the Agency reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
 - 10.2.3.4. If the Agency, in the Agency's sole discretion, determines Vendor has not provided or is unwilling to provide facts sufficient to enable the Agency to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any of Vendor's Confidential Information as permitted above, the Agency shall provide reasonable notice to Vendor of the circumstances giving rise to such disclosure. Vendor agrees to indemnify and hold harmless the Agency and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs, and expenses of every kind and nature whatsoever (including the reasonable value of time of the Attorney General's Office and the costs, expenses, and attorney fees of other counsel retained by or on behalf of the Agency) arising out of, resulting from, or in any way related

to any judgments or damages awarded against any of the foregoing entities or individuals in favor of a Third Party requesting any of Vendor's Confidential Information against the Agency or any such entities or individuals.

- 10.3. Open Records and Electronic Discovery Requests and Records Retention. Vendor will, upon the Agency's request and within any time period specified by the Agency, take all actions requested by the Agency to assist it in complying timely with any request for Customer Data or other data or information that may be made by any Third Party in accordance with applicable public or open records laws (including Iowa Code Chapter 22) or in connection with any subpoena, court order, discovery request, regulatory or criminal investigation or proceeding, or any other matter that may require the Agency to produce or provide Customer Data or other data or information to a Third Party. Vendor will produce and provide all Customer Data or other data or information within the time period set forth in the Agency's request. Vendor will take all steps commercially reasonable to store and maintain Customer Data in its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon the Agency's request, take all commercially reasonable actions requested by the Agency to assist it in complying with any federal, state, or local record retention requirements, policies, procedures, or other similar requirements.
 - 10.4. Non-Exclusive Equitable Remedy. Each Party acknowledges and agrees that due to the unique nature of Confidential Information, there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or Third Parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party will be entitled to seek appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section 10 (Confidentiality) will constitute a material breach of this Agreement and be grounds for immediate termination of any applicable Purchasing Instrument, or in the Agency's case the Agreement, in the exclusive discretion of the non-breaching Party.
 - 10.5. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 10 (Confidentiality) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.
- 11. Security/Privacy, Business Continuity, and Disaster Recovery.**
- 11.1. Data Protection. Vendor, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, Vendor and Vendor Personnel shall comply with the following:
 - 11.1.1. Implement and maintain reasonable and appropriate administrative, technical, and physical security measures designed to safeguard against unauthorized access, disclosure, theft, or modification of or to Customer Data, Customer Property, the Application Services, System(s), or any related Deliverables. Such security measures shall be in accordance with recognized industry standards and controls (such as NIST 800-53 Revision 4 or ISO27001:2013), and not less stringent than the measures Vendor utilize to safeguard their own Confidential Information of like importance. In addition, such security

measures, to the extent applicable, shall comply with, all applicable federal, state, and local laws, rules, ordinances, codes, regulations, and orders related to such security measures.

- 11.1.2. All Customer Data shall be encrypted at rest and in transit with controlled access and the Application Services, System(s), and any related Deliverables shall use TLS 1.2 or higher. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor, Vendor Contractors, and Vendor Personnel are responsible for encryption of Customer Data in their possession. Additionally, Vendor shall ensure hard drive encryption consistent with industry standard encryption methods .
- 11.1.3. Storage, Processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America. Vendor shall not allow Vendor Personnel to store, Process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.
- 11.1.4. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support.

11.2. Additional Hosting Terms.

- 11.2.1. *Import and Export of Data.* To the extent applicable to services provided, upon written request, Vendor shall provide to the Agency or its Authorized Contractors an export of its data or information, including Customer Data, in whole or in part to or from the System(s), and in such formats as may be acceptable to the Vendor. In the event the Agency is unable to get an export of its data and information in whole or in part, Vendor shall reasonably assist the Agency in doing so at no charge. As it relates to the export of such data and information, Vendor shall provide to or ensure that the Agency has obtained an export of any requested data or information within three (3) days of any request in the format specified by the Agency.
- 11.2.2. *Retention of Customer Data.* Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor shall not take any action to intentionally erase any Customer Data until otherwise directed by the Agency in accordance with Section 10.1.2 (Destruction or Return of Customer Data).
- 11.2.3. *Compliance/Audits.*
 - 11.2.3.1. *Omitted.*
 - 11.2.3.2. Upon written request, Vendor may , at its own cost, provide any of the following:
 - 11.2.3.2.1. An executive summary of an external network penetration test of Vendor's systems conducted by an independent, Third Party;

- 11.2.3.2.2. A copy of Vendor's annual SOC 2 type 2 report (for the Trust Services Principles security, confidentiality, and availability);
- 11.2.3.2.3. A summary of its disaster recovery/business continuity plan
- 11.2.3.3. *Security Audit.* During the Term, the Agency or its Authorized Contractor(s) (that are reasonably acceptable to Vendor and have signed a sufficient confidentiality agreement) may perform an off-site security audit of Vendor's security practices and procedures. The Agency's regulators (including any federal agencies providing funds used to pay for the Application Services, System(s), or Deliverables, in whole or in part, or which regulate the security or safeguarding of any Customer Data stored, Processed, or housed in the System(s)) shall have the same right upon written request.

11.3. Personnel Safeguards.

11.3.1. *Background Checks.*

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

- 11.3.1.1.1. If the criminal history check reveals a conviction, Vendor shall work with Agency to review the conviction and any additional information provided by the applicant. The existence of a conviction does not automatically disqualify an applicant or employee from performance on this performance or provision of Services or Deliverables under this Agreement. Decisions regarding assignment to this Agreement will be determined on a case-by-case basis and consideration will include but not be limited to:

- 11.3.1.1.1.1. The nature of the conviction.
- 11.3.1.1.1.2. The length of time between the offense and the employment decision.
- 11.3.1.1.1.3. Number of offenses.
- 11.3.1.1.1.4. Relatedness of the conviction to the duties and responsibilities of the position.
- 11.3.1.1.1.5. Efforts at rehabilitation.
- 11.3.1.1.1.6. Accuracy of the information that the applicant provided on the employment application.

- 11.3.1.2. Absent exigent circumstances, applicants and employees who have been convicted of crimes involving crimes of dishonesty, financial crimes, and crimes involving the misuse of confidential information shall be disqualified from designation as Vendor Personnel.
- 11.3.1.3. Deferred judgments shall be considered in all background investigations.
- 11.3.1.4. *Additional Screening.* The Agency reserves the right to subject Vendor Personnel to additional background checks at any time prior to or during any engagement. Such background checks may include a work history, financial review, request for criminal history data, or local or state criminal history check, national criminal history check through the Federal Bureau of Investigation (“**FBI**”), or other background check requirement imposed or permitted by law, rule, regulation, order, or policy. Vendor Personnel may be required to authorize the release of the results of criminal history checks, including those through the FBI, to one or more other Governmental Entities. Such background checks may be conducted by the Agency or its Authorized Contractors. The Agency may also require Vendor to conduct a work history or financial review of Vendor Personnel. Vendor shall provide the Agency with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.
- 11.3.1.5. Vendor shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor or the Agency or its Authorized Contractors.
- 11.3.2. *Right to Remove Individuals.* Should the Agency be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel, the Agency may request the replacement of such Vendor Personnel (“**Replacement Request**”). The Replacement Request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. If the Agency, in its sole discretion, determines Vendor Personnel pose a potential security risk and notifies Vendor of such security risk in its Replacement Request, Vendor shall immediately remove such individual; any replacement furnished by Vendor in connection with such a request may not perform or provide Services or Deliverables to the Agency unless and until the Agency gives its consent to Vendor’s use of such replacement.
- 11.3.3. *Security Awareness Training.* Vendor shall promote and maintain an awareness of the importance of securing, safeguarding, and otherwise appropriately handling Customer Property, including Customer Data, among Vendor Personnel, including but not limited to, annual security awareness training.
- 11.3.4. *Separation of Job Duties.* Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Contractors and Vendor Personnel to execute or

have executed non-disclosure agreements, and limit access to and knowledge of Customer Property and Customer Data to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Services, Deliverables, the Application Services, and System(s) hereunder.

11.3.5. *Reserved.*

11.4. Security Breaches.

11.4.1. *Reporting.* Vendor will report to the Agency within the lesser of seventy-two (72) hours or in accordance with applicable law of Vendor's discovery of any actual Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to the Agency within seventy-two(72) hours of discovery or notification of the actual Security Breach. Such written confirmation shall include, to the extent known, an explanation of the nature of and circumstances surrounding such actual Security Breach.

11.4.2. *Investigations in Response to Actual Breach.* Vendor agrees, at their expense (subject to the limitations of liability in the Agreement), to take all steps necessary to promptly remedy any actual Security Breach and to reasonably cooperate with the Agency in resolving and mitigating any damage from such actual Security Breach at Vendor's cost (subject to the limitations of liability in the Agreement). Vendor will reasonably cooperate with the Agency and its Authorized Contractors (that are reasonably acceptable to Vendor and have signed a sufficient confidentiality agreement) in investigating such actual Security Breach,. On notice of any actual Security Breach, Vendor will immediately institute appropriate controls to maintain and preserve all relevant electronic evidence relating to such actual Security Breach in accordance with industry standard practices. Vendor will deliver to the Agency a report of the Security Incident and future incident mitigation plan as soon as practical. Vendor agrees that it will not notify any regulatory authority relating to any actual Security Breach unless the Agency specifically requests Vendor do so in writing.

11.4.3. *Additional Remedies in the Event of Actual Breach.* Upon the Agency's determination that a Security Breach involving or relating to Customer Data, has occurred, Vendor shall reasonably cooperate with the Agency in rectifying and responding to such Security Breach. Subject to the limitations of liability in the Agreement, Vendor will be responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (including the reasonable value of time of the Iowa Attorney General's Office or the costs, expenses and attorney fees of other counsel retained by the State of Iowa or the Agency), subject to the Super Cap (defined below in Section 13) related to, arising out of, or incurred by or on behalf of the Agency as a result of, any Security Breach caused directly or indirectly, in whole or in part, by any act, error or omission, negligence, or misconduct of Vendor, Vendor Contractors, or Vendor Personnel, including the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); opening and closing accounts, printing new checks, embossing new cards; audits, investigations,

public relations services, call center services, websites and toll-free numbers for assisting affected individuals; obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all other reasonable costs associated with corrective or other actions that are taken to mitigate or address the Security Breach. The Agency shall determine, in its discretion, the content and means of delivery of any such notifications or reports.

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

11.5. Disaster Recovery and Business Continuity.

- 11.5.1. *Creation, Maintenance, and Testing.* Vendor shall maintain a Business Continuity and Disaster Recovery Plan ("Plan"), and implement such plan in the event of any unplanned interruption. Upon the Agency's written request, Vendor shall provide the Agency with a summary of Vendor's current Plan. Vendor shall actively test, review, and update the Plan on at least an annual basis using industry standard practices as guidance. Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard the Customer Data. Additional disaster recovery and business continuity requirements may be set forth in individual Purchasing Instruments.
- 11.5.2. *Activation of Plan.* Vendor shall immediately notify the Agency of any disaster or other event that results in the activation of the Plan. If Vendor fails to reinstate the Application Services, System(s), and related Deliverables impacted by any such disaster within the periods of time set forth in the Plan, the Agency may, in addition to any other remedies available hereunder, immediately terminate this Agreement or applicable Purchasing Instrument as a non-curable default and without any penalty or liability. Without limiting Vendor's obligations under this Agreement, whenever a disaster causes Vendor to allocate limited resources between or among Vendor's customers, the Agency shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 12.26 (Force Majeure) shall not limit Vendor's obligations under this Section 11 (Security/Privacy, Business Continuity, and Disaster Recovery). Further, nothing in this shall be construed as in any way limiting Vendor's obligations elsewhere in this Agreement, including any applicable services levels and related remedies set forth in any Service-Level Agreement attached hereto as Special Terms and Conditions.
- 11.5.3. *Backup and Recovery.* Except as otherwise set forth in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and Conditions, Vendor is responsible for maintaining a backup of Customer Data . Additionally, unless otherwise provided in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and Conditions, Vendor shall store a backup of Customer Data in an off-site facility no less than daily,

maintaining the security of Customer Data, consistent with the security requirements set forth in this Section 11 (Security/Privacy, Business Continuity, and Disaster Recovery). To the extent applicable in calculating the fees to be charged to the Agency under this Agreement, any backups of Customer Data shall not be considered in calculating storage used by the Agency.

11.5.4. *Loss of Data.* In the event of any Security Breach, Vendor shall, in addition to any other remedies available pursuant to this Agreement, or otherwise available at law or in equity, to the extent applicable: (a) notify the Agency as soon as practicable in accordance with Applicable Law but no later than seventy-two (72) hours of becoming aware of such occurrence; (b) send the Agency written confirmation within seventy-two(72) hours of discovery or notification of the occurrence; (c) reasonably cooperate with Agency in investigating the occurrence;; (d) subject to the Super Cap, indemnify and hold harmless the Agency and its employees, officers, board members, agents, representatives, and officials from and against any and all unaffiliated third-party claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and expenses (including the reasonable value of time of the Iowa Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of such occurrence; (e) take all reasonable efforts to recreate lost Customer Data; and, (g) provide to the Agency a detailed plan within fifteen (15) business days of the occurrence describing the measures Vendor will undertake to prevent a future occurrence.

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

12. General Provisions.

12.1. Ancillary Agreements and Non-Disclosure Agreements. Vendor or Vendor Contractors will execute any mutually agreed-upon agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to the Agency in connection with this Agreement, including executing a Confidential Information Requirements for Vendors addendum as required by Pub 1075. Such Ancillary Agreements shall be attached as Special Terms and Conditions hereto and incorporated by reference as if fully set forth herein.

12.2. Immigration Status. Vendor and Vendor Contractors are responsible for ensuring Vendor Personnel possess and maintain valid Visas for any Vendor Personnel for whom a Visa is required. As outlined in section 11.3.1, the Agency requires Vendor or Vendor Contractors to conduct E-Verify employment-eligibility verifications of Vendor Personnel performing or providing Services or Deliverables hereunder, including any Vendor Personnel who may have access to Customer Property or Customer Data. Vendor shall be responsible for all costs associated with the E-Verify process and shall provide

the Agency with the results of this process in a mutually agreeable form and manner at the time or in intervals as mutually agreed to by the Parties.

- 12.3. No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor, Vendor Contractors, and Vendor Personnel shall not make any media release or other public announcement relating to or referring to this Agreement, a Purchasing Instrument, or the Services or Deliverables provided hereunder without the Agency's prior written consent. Vendor, Vendor Contractors, and Vendor Personnel shall acquire no right to use, and shall not use, without the Agency's written consent, the terms or existence of this Agreement, Purchasing Instrument, or the fact of providing Services or Deliverables to the Agency hereunder or the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the State of Iowa, 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 Vendor or Vendor's Services or Deliverables by the State of Iowa; or (c) in any manner other than expressly in accordance with this Agreement.
- 12.4. Independent Contractor. Vendor is an independent contractor performing services for the Agency.
- 12.4.1. Vendor, Vendor Contractors, and Vendor Personnel shall not hold themselves out as an employee or agent of the State of Iowa or its related entities.
- 12.4.2. Except as otherwise expressly provided herein or in a Purchasing Instrument, Vendor or Vendor Contractors shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Vendor Personnel to perform and provide the Services, Deliverables, Application Services, or System(s) hereunder.
- 12.4.3. Vendor Personnel are not eligible for or otherwise entitled to, and Vendor shall ensure Vendor Personnel never claim they are eligible for or otherwise entitled to, any Agency employee benefits, including retirement benefits, insurance coverage, or the like.
- 12.4.4. Vendor Personnel shall not be considered employees of the State of Iowa for any purpose, including for federal or Agency tax purposes. The State of Iowa will not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with its performance of this Agreement.
- 12.4.5. The Agency shall have no right or authority to direct or control Vendor Personnel with respect to the performance or provisioning of Services or Deliverables under this Agreement, or with respect to any other matter, except as otherwise provided by this Agreement or a Purchasing Instrument. The Agency is interested only in the results to be achieved by Vendor under this Agreement and related Purchasing Instruments. The manner and method of performing and providing Services and Deliverables under this Agreement and related Purchasing Instruments shall be under the exclusive control of Vendor, in accordance with the terms and conditions of this Agreement and the applicable Purchasing Instrument(s).
- 12.4.6. During any engagement under this Agreement, Vendor Personnel may perform work on behalf of, and provide deliverables to, Third Parties, and may market and advertise their services to Third Parties, so long as such activities

do not: (a) violate any terms or conditions of this Agreement; (b) adversely affect the performance or provisioning of Services or Deliverables hereunder or satisfaction of any other duties, responsibilities, or obligations set forth herein; (c) knowingly create an actual conflict of interest; (d) violate any intellectual property rights or interests of the Agency; (e) knowingly expose the Agency to an increased risk of experiencing a Security Breach or other cyber event.

- 12.4.7. Vendor and Vendor Contractors shall be free to hire employees as is necessary for their business purposes; provided, that such employees providing or provisioning Services or Deliverables hereunder shall satisfy the terms and conditions of this Agreement and any Purchasing Instrument(s) executed hereunder. The Parties acknowledge and agree that the Agency will not have the authority to hire, fire, supervise, control, or manage any Vendor Personnel.
- 12.4.8. Vendor Personnel shall not receive performance reviews, vocational training, or business cards from the Agency; shall clearly state in any and all communications related to the performance or provisioning of Services or Deliverables hereunder that they are employees of Vendor or Vendor Contractor, as opposed to employees of the Agency; and shall not be subject to the Agency's standard disciplinary practices and procedures.
- 12.5. Amendments. This Agreement may be amended, modified, or replaced from time to time by mutual consent of the Agency and Vendor. All amendments to this Agreement must be executed by both Parties in writing.
- 12.6. No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 12.7. Choice of Law and Forum. This Agreement shall be governed by the laws of the State of Iowa, without giving effect to the choice of law principles of Iowa law. Any litigation in connection with this Agreement, shall be brought and maintained in the state or federal courts sitting in Polk County, Iowa. Vendor submits to the jurisdiction of the aforesaid courts and waives any jurisdictional objection based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability available to the Agency. Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's Registered Agent as listed in the CD&E.
- 12.8. Assignment and Delegation. This Agreement may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that the Agency may assign, transfer, or convey this Agreement, in whole or in part, to any Governmental Entity that succeeds its duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency.
- 12.9. Use of Third Parties.
 - 12.9.1. None of the Services, Deliverables, Applications Services, or System(s) to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party, including Vendor Contractors, without the prior written consent of the Agency. Execution of a Purchase Instrument which references engagement of a Third Party by Vendor shall constitute written consent of the Agency. Such consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Agency, whether financial or otherwise. Any subcontract to which the Agency has consented shall be in

writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Agency may deem necessary. Vendor is solely liable for any and all payments that may be due to Vendor Contractors pursuant to any subcontract hereunder. Vendor shall indemnify and hold harmless the Agency and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any Vendor Contractor. In addition, the Agency is not responsible for any failure of any Vendor Contractors to pay any amounts that may be due Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the Services, Deliverables, Application Services, or System(s) performed or provided under this Agreement, the Agency may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in such manner shall not relieve Vendor or its surety from any obligation with respect to any unpaid claims. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Vendor Contractors in any way related to performance of Services hereunder. Any action of a Vendor Contractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

12.9.2. Subject to the foregoing, as the date of the execution of this Agreement the Agency expressly consents to Vendor's use of GrantWorks for purposes of providing Community Outreach, Grant Program Compliance and Monitoring, and Grant Administration.

12.10. Integration. This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included in this Agreement. Thus, the Agency shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "browser-wrap" agreement, or "sneakwrap" agreement, or any other similar agreement that may accompany, relate to, or be embedded in any Deliverable(s), the Application Services, or System(s). Vendor acknowledges that it has thoroughly read this Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents that are executed or may be executed hereunder and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept the same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Agency on the basis of draftsmanship or preparation thereof.

- 12.11. Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Agency and Vendor for the Services, Deliverables, Application Services, or System(s) provided in connection with this Agreement.
- 12.12. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and Vendor, failure by the Agency or Vendor at any time to require performance by the other Party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the Parties hereto.
- 12.13. Notices. Any notices required by the Contract shall be given in writing by registered or certified mail with proof of receipt, or overnight delivery, which shall be addressed to each party's Notice Address. From time to time, the parties may change the name and address of a party designated in the Notice Address. Such changes shall be in writing to the other party. Notices shall be deemed to have been provided: At the time it is actually received in the case of hand delivery, or within five days after it is deposited in the U.S. Mail.
- 12.14. Cumulative Rights. The various rights, powers, options, elections, and remedies of the Agency provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies, or priorities allowed by law, and shall in no way affect or impair the right of the Agency to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by the Agency of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 12.15. Severability. If any provision of this Agreement 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 Agreement.
- 12.16. Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all Vendor Personnel providing Services and Deliverables hereunder are responsive to the timelines identified in a duly executed Purchasing Instrument.
- 12.17. Authorization. Vendor represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Vendor, enforceable in accordance with its terms.
- 12.18. Successors in Interest. All terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, and legal representatives.
- 12.19. Records Retention and Access. Vendor shall maintain books, documents, and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the Term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination, or expiration of this Agreement, or the completion of any required

audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the Agency, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt, and transcribe any pertinent books, documents, or other records of Vendor, whether electronic or optically stored, relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require Vendor Contractors to agree to the same provisions as set forth in this Section 12.19 (Records Retention and Access).

- 12.20. Headings or Captions and Terms. The Parties acknowledge that the headings and captions used in this Agreement are for convenience and reference purposes only. They are not intended to have any legal or substantive significance or alter the meaning or interpretation of the provisions they precede.
- 12.21. Multiple Counterparts and Electronic Signatures. This Agreement may be executed in several counterparts, each of which shall be considered an original and all of which when taken together shall constitute one contract binding on all Parties. The Parties agree to accept electronic signatures in lieu of "wet" signatures on contract documents in accordance with Iowa Code chapter 554D or other applicable law.
- 12.22. Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting a partnership, joint venture, or other association of any kind implying the establishment of an agent/principal relationship between the Parties.
- 12.23. Attachments. The Parties agree that if an Addendum, Attachment, Rider, Schedule, Appendix, or Exhibit is attached hereto by the Parties, and referred to herein, then the same shall be deemed incorporated herein by reference as if fully set forth herein.
- 12.24. 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 supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.
- 12.25. Obligations of Joint Entities. If Vendor 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 Agreement, and for any default of such activities and obligations.
- 12.26. Force Majeure. If one Party is unable to fulfill its obligations under this Agreement due to circumstances beyond its control, including unforeseeable events that no one could have predicted or prevented, such as acts of God, war, civil disturbances, or other catastrophic events, that Party will not be considered in default. These circumstances must be abnormal and unforeseeable, and the Party affected must have taken all necessary precautions to prevent them. However, financial difficulties, legal restrictions, strikes, labor unrest, supply chain disruptions, internet failure, power outages, hacker attacks, viruses, and security breaches are not considered force majeure events. If a delay or inability to perform is caused by a subcontractor hired by the Party, the Party cannot use force majeure as an excuse unless the subcontractor is also affected by a force majeure event. If a force majeure event affects the Party's performance, the Party will make its best efforts to provide an alternative, if possible, comparable solution. The Agency will

determine whether the alternative solution is comparable. The Party invoking force majeure must immediately inform the other Party about the event causing the delay and the reasons behind it. Both Parties will work together to minimize the impact of the delay and the scope of work affected by the unforeseen events. If Vendor's performance obligations have specific deadlines, those deadlines will be extended by the amount of time lost due to the force majeure event.

12.27. Right of Inspection/Contract Compliance. Vendor shall allow the Agency making purchases or its designee to inspect Vendor's books and records at reasonable times in order to monitor and evaluate performance of this Agreement. All subcontracts shall contain provisions which allow the same. In addition, Vendor agrees that the Agency or its designee may conduct a complete contract compliance off-site audit at least once annually during the Term of this Agreement and after termination or expiration of this Agreement to determine whether or not Vendor is complying with the terms of this Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

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

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

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

12.29. Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Agency is exempt from the payment of Agency sales and other taxes: https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf.

12.30. Title to Property. Title to all property, including Customer Property, furnished by the Agency to Vendor to facilitate the performance of this Agreement and any Customer-Owned Deliverables shall remain the sole property of the Agency or applicable Third Party owning Customer Property that has been licensed to the Agency. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Agency upon the earliest of completion, termination, or cancellation of this Agreement or the applicable Purchasing Instrument, or at the Agency's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided for in this Agreement, Vendor shall

not disclose or use such property for any of the following purposes, including pledging or encumbering it; selling or using it for monetary gain; using it to compile mailing lists; solicit business; or pursue other business activities. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Agency under this Agreement, or for Customer Property or Customer-Owned Deliverables purchased and paid for by the Agency under this Agreement, shall pass to and vest in the Agency.

- 12.31.** Exclusivity. This Agreement is not exclusive. The Agency may obtain similar or identical Services, Deliverables, Application Services, or System(s) from other vendors.
- 12.32.** Award of Related Agreements. The Agency may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate reasonably with Authorized Contractors who may be engaged by the Agency in connection with this Agreement, including complying with any license terms, conditions, or restrictions imposed by such Authorized Contractors in connection with any systems, software, or other intellectual property owned by or licensed by or through such Authorized Contractors and to which Vendor, Vendor Contractors, or Vendor Personnel must use or access or with which the Application Services, System(s), or related Deliverables must interface, integrate, or connect. Any reference herein to the Agency's designee or other like reference shall be deemed to include its Authorized Contractors. Vendor will ensure that any Vendor Contractors or Vendor Personnel will abide by this provision.
- 12.33.** Sovereign Immunity. The Agency, on its own behalf or on behalf of any of its officers, directors, employees, officials, and agents, does not waive sovereign immunity or any other immunity available to it by entering into this Agreement and specifically retains and reserves the defense of sovereign immunity or any other immunity and all defenses available under Agency and federal laws, rules, and regulations for any claim arising out of or related to this Agreement.
- 12.34.** Reserved.
- 12.35.** Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, and intellectual property, including Customer Property, furnished by the Agency for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its commercially reasonable efforts to prevent damage to all such property. In addition, at the Agency's request, Vendor will reimburse the Agency for any loss or damage to such property caused by the negligence or willful misconduct of Vendor, Vendor Contractors, or Vendor Personnel.
- 12.36.** Survives Termination. This Section 12 (General Provisions) shall survive termination or expiration of the Agreement.
- 13. Limitation of Liability.** The maximum aggregate liability of each Party under this Agreement, whether an action is in contract or tort and regardless of the theory of liability, shall be one times the Contract Value of the Purchasing Instrument under which the liability arose. Notwithstanding the foregoing, no party shall be liable to the other for consequential, incidental, indirect, special, or punitive damages, provided, however, under no circumstances shall the foregoing limitations apply to damages, arising out of or relating to:

- 13.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;
- 13.2. Death, bodily injury, or tangible property damage;
- 13.3. Any contractual obligations pertaining to indemnification; intellectual property; liquidated damages; compliance with the applicable laws, rules, or regulations of this Agreement; or Confidential Information (Liability related to Confidential Information shall be subject to the Super Cap, as set forth below;
- 13.4. Claims arising under provisions of the Agreement calling for indemnification of the State for third-party claims against the State for bodily injury to persons or for damage to real or tangible personal property caused by Vendor's negligence or willful conduct.

NOTWITHSTANDING ANYTHING STATED TO THE CONTRARY IN THIS AGREEMENT, INCLUDING ANY INDEMNIFICATION OBLIGATIONS HEREUNDER, OR ANY STATEMENT OF WORK, CHANGE ORDER, OR OTHER DOCUMENT OR WRITING INCORPORATED HEREIN BY REFERENCE, OR ANY OTHER AGREEMENT BETWEEN THE PARTIES RELATING TO THE SERVICES, VENDOR PROPRIETARY MATERIAL, OR DELIVERABLES PROVIDED HEREUNDER, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF VENDOR ARISING OUT OF OR FROM, OR RELATING TO, THE USE, COLLECTION, DISCLOSURE, STORAGE, TRANSFER, MOVEMENT, OR PROCESSING OF ANY DATA OR INFORMATION, INCLUDING, BUT NOT LIMITED TO, ANY ACTUAL OR ALLEGED FAILURE TO COMPLY WITH, OR ACTUAL OR ALLEGED BREACH OR VIOLATION OF, ANY APPLICABLE PRIVACY, CYBERSECURITY, OR DATA PROTECTION LAWS, OR ANY ACTUAL OR ALLEGED BREACH OR VIOLATION OF, OR ACTUAL OR ALLEGED FAILURE TO COMPLY WITH, THE CONFIDENTIALITY OR DATA PROTECTION OBLIGATIONS SET FORTH IN OR INCORPORATED INTO THIS AGREEMENT, EXCEED ONE MILLION DOLLARS (USD \$1,000,000) (the "Super Cap"), APPLICABLE TO EACH PURCHASING INSTRUMENT, UNLESS OTHERWISE AGREED TO IN THE SPECIFIC PURCHASING INSTRUMENT.

Nothing in this Agreement, including this Section 13 (Limitation of Liability), shall be construed to waive any clause regarding the sovereign immunity of Customer or the State of Iowa.

Special Terms and Conditions #001

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

Area	Blended Hourly
Community Outreach	\$140
Mapping	\$175
Grant Program Compliance and Monitoring	\$240
Grant Administration	\$240

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

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

2. **Services Covered.** Services that a state agency may purchase through this master agreement include the following:
- 2.1 Community Outreach (RFP § 4.3.2).
 - 2.2 Provider Availability Data Collection and Mapping (RFP § 4.3.3).
 - 2.3 Grant Program Compliance and Monitoring (RFP § 4.3.4).
 - 2.4 Grant Administration (RFP § 4.3.5).

3. **Insurance.**

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

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

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

3.1. Insurance Requirements

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals thereof. The Contractor's insurance shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Agency shall be named as additional insureds or loss payees on Contractor's General Liability and Umbrella policies via blanket endorsement.

3.2. Types and Amounts of Insurance Required

Unless otherwise requested by the Agency in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract Declarations and Execution Page for each occurrence. Contractor shall ensure its subcontractors acquire and maintain sufficient insurance in accordance with the provisions in Section 3. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

3.3. 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. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. Contractor shall provide Agency at least thirty (30) days' prior written notice of any cancellation or non-renewal of the policies required under this Contract where such cancellation or non-renewal does not result in equal or greater coverage. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

3.4. Waiver of Subrogation Rights

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

