

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

Title of Contract: Capgemini Consulting Services Agreement ("Agreement").		Contract Number: 2020BUS0426
State Agency's Name: Iowa Office of the Chief Information Officer ("Agency")		
Vendor's Name: Capgemini America, Inc. ("Vendor".)		
Contract to Begin/Effective Date: As of the date of last signature below,	Date of Expiration: May 1, 2023	Annual Extensions: Up to seven (7) Annual One Year Renewals.
<p><u>Documents Incorporated/Order of Precedence.</u> This Agreement and any and all attachments to this Agreement which are incorporated by reference as 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 or any attachments hereto, such conflict or inconsistency shall be resolved in the following order:</p> <ol style="list-style-type: none"> I. First by giving preference to any Special Terms and Conditions/Ancillary Agreements addressing compliance concerns; 2. Second by giving preference to the specific provisions of the Capgemini Consulting Services Agreement; 3. Third by giving preference to the specific provisions of any Purchasing Instruments (Purchase Order(s)/Statement(s)) executed under the Capgemini Consulting Services Agreement; 4. Sixth by giving preference to any other Special Terms and Conditions executed under the Capgemini Consulting Services Agreement. 		
<p><u>Notes:</u></p> <ul style="list-style-type: none"> • This Agreement does not guarantee any minimum level of purchases, usage, or compensation; • This Agreement is available to any Governmental Entity, including State Agencies and political subdivisions, in the State of Iowa; • Absent a separate, lawful procurement basis justifying the purchase, only the Services and/or Deliverables available under the GSA Schedule are available under this Agreement; • Development and delivery of source code, applications, software, or any similar scope of work are prohibited under this Agreement; 		

- Pursuant to Section 12.1, Governmental Entities making purchases hereunder may require Vendor, Vendor Contractors, or Vendor Personnel to execute ancillary agreements to address compliance, legal, confidentiality, and privacy concerns that may be unique to an applicable Governmental Entity. Notwithstanding the foregoing, Governmental Entities making purchases hereunder shall not provide or make available to Vendor, Vendor Contractors, or Vendor Personnel any Personal Data.

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

Vendor: Capgemini America, Inc.

Mark Stein

Date Signed

May 29, 2020

Printed Name and Title of Person Signing

Mark Stein
Executive Vice President

Address

The Towers at Williams Square
Central Tower
5215 N. O'Connor Blvd, Suite 250
Irving, TX. 75039

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

By (Authorized Signature)

Annette M. Dunn

Date Signed

5/29/2020

Printed Name and Title of Person Signing

Annette Dunn, Director

Address

200 E. Grand Avenue
Des Moines, IA, 50309

Iowa Office of the Chief Information Officer

Capgemini Consulting Services Agreement

This Agreement for consulting and other professional services is made and is effective as of the date identified on the Contract Declarations and Executions Page ("Effective Date"), by and between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer ("Agency"), and Capgemini America, Inc., a corporation organized under the laws of New Jersey ("Vendor"). The parties may be referred to herein individually as a "Party" or collectively as the "Parties." The Parties agree to the following:

I. Overview.

- 1.1. **Purpose.** This Agreement establishes the terms and conditions pursuant to which the Agency may procure professional consulting services as further described herein and any Purchasing Instrument(s) attached hereto.
 - 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. **Authorities.** The Parties enter into this agreement pursuant to authority granted to the Office of the Chief Information Officer, Iowa Code Chapter 8B.24(5)(b)(2) where "the contract, price, terms, and conditions are no less favorable than the contractor's current federal supply contract price, terms, and conditions; the contractor has indicated in writing a willingness to extend such price, terms, and conditions to the office..." Applicable to and specifically for purposes of this agreement, the Vendor's federal supply contract is GSA contract number is GS-35F-060 IM.
- 2. Definitions.** In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:
1. "Acceptance" means the Agency has determined a portion of the Services and/or Deliverables, satisfy its Acceptance Tests. "Final Acceptance" means the Agency has determined all Services and/or Deliverables in a multi-component Deliverable, satisfy the Agency's Acceptance Tests. "Non-acceptance" means the Agency has determined that a portion of or all of the Services and/or Deliverables have not satisfied the Agency's Specifications.
 2. "Acceptance Criteria" means the Specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, or other criteria mutually agreed upon by the Parties and against which Acceptance Tests are conducted, including any of the foregoing stated or expressed in the applicable Purchasing Instrument.
 3. "Acceptance Tests" or "Acceptance Testing" means the review performed by or on behalf of the Agency to determine whether any Services and/or Deliverables meet Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.

- 2 **"Agreement,"** unless the context requires otherwise, means the collective documentation as mutually agreed to by the Parties 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.
- 3 **"Applicable Law"** means any state and federal laws, rules, regulations, standards, and orders applicable to Vendor as a service provider independently of the services being provided hereunder.
- 5 **"Confidential Information"** means, subject to any applicable federal, state, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party ("**Disclosing Party**") to the other party ("**Receiving Party**") that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent Third Party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency, or regulatory authority, or by applicable regulatory or professional standards and in compliance with section 10.1.5 of this Agreement; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party. For the sake of clarity and avoidance of doubt, Vendor will not disclose to the Agency any Confidential Information without expressly identifying with particularity the confidential nature of any such information in the applicable Purchasing Instrument.
- 7 **"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.
- 8 **"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.
- 9 **"Customer-Owned Deliverables"** means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of the Agency or for a specific Project under this Agreement.



- 1) **"Deficiency"** means an error, failure, omission, or other problem of any nature whatsoever related to the Services and/or a Deliverable(s) including any failure of a Deliverable(s) to conform to or meet an applicable Specification.
- 2.11. **"Deliverables"** means all of the work, work product, items, materials, and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly, in connection with this Agreement including and required to be delivered to the Agency as specifically identified, defined, and agreed upon in a Purchasing Instrument executed hereunder.
- 2.12. **"Finally Determined"** means when a claim or dispute has been finally determined by a court of competent jurisdiction or other agreed-upon governing body and either (a) no associated appeal has timely been sought if capable of being sought, or (b) any and all appellate rights properly exercised have otherwise been exhausted.
- 2.13. **"Governmental Entity"** shall include any governmental entity, as defined in Iowa Code Section SA. IOI, or any successor provision to that section. The term Governmental Entity includes the Executive Branch, Legislative Branch, Judicial Branch, agencies, independent agencies, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government, including political subdivisions or other local governmental entities.
- 2.14. **"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.
- 2.15. **"Office of the Chief Information Officer" or "OCIO"** means the Office of the Chief Information Officer of the State of Iowa established by Iowa Code chapter 8B.
- 2.16. **"Personal Data"** means any information relating to an identified or identifiable person, including, but not limited to, Social Security or other government-issued identification numbers, account security information, financial account information, credit/debit/gift or other payment card information, account passwords, intellectual property, document identification number, and sensitive or personal data (or equivalent terminology) as defined under any law, statute, directive, regulation, policy, standard, interpretation, order (including any and all legislative or regulatory amendments or successors thereto) regarding privacy, data protection, information security obligations, or the processing of personal data. For the avoidance of doubt, Personal Data shall include:
- 2.16.1. **"Federal Tax Information" or "FTI,"** as defined by Internal Revenue Service ("IRS") Publication 1075 (**"Pub 1075"**), available at <http://www.irs.gov/pub/irs-pdf/p1075.pdf>, and corresponding Internal Revenue Code ("IRC") rules and regulations;
- 2.16.2. Any data or information covered under or protected by Iowa Code chapter 71.5C; and
- 2.16.3. Any data or information covered under or protected by Iowa Code sections 422.20 and 422.72.

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

- 2.17. "**Project**" means a mutually agreed upon scope of Services and/or Deliverables which may encompass one or more Purchasing Instruments.
- 2.18. "**Purchasing Instrument**" means an individual transactional document or Statement of Work executed hereunder for the purchase of Services or Deliverable(s) pursuant to this Agreement which identifies the specific Services or Deliverable(s) to be purchased and any Acceptance Criteria or Specifications related thereto.
- 2.19. "**Services**" means the consulting and other professional services as may be more fully described hereunder or in any Purchasing Instrument(s) attached hereto.
- 2.20. "**Special Terms and Conditions**" means any attachment hereto entitled, in whole or in part, "**Special Terms and Conditions**" and which has been mutually agreed to by the Parties,
- 2.21. "**Specifications**" means any and all specifications, requirements, technical standards, performance standards, representations, warranties, criteria, and other specifications related to any Services and/or Deliverables described or stated in this Agreement or any Purchasing Instrument(s).
- 2.22. "**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.
- 2.23. "**Vendor**", in addition to its meaning in the CD&E, shall, unless the context clearly requires the contrary, be deemed to include Vendor Contractors and Vendor Personnel.
- 2.24. "**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.
- 2.25. "**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 and/or Deliverables as defined by, described by, and in accordance with the terms, conditions, requirements, Specifications, and Acceptance Criteria as set forth in this Agreement, including any Special Terms and Conditions, any Purchasing Instrument(s) executed by the Parties hereunder, or any related attachments or documents mutually agreed to by the Parties attached hereto or associated herewith, including a "project plan(s)" or other similarly captioned document.

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 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:
- 321 . *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.
- 322 . *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.
- 323 . *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.

4. **Compensation and Additional Rights and Remedies.**

- 4.1. Certification of Accuracy. Vendor certifies that the Contractor's prices under this contract shall not exceed the prices at which the Vendor currently offers the Services and Deliverables to the US Government under the GSA's Multiple Award Schedule Program.
- 4.2. Pricing/Compensation. The fees for the Services and/or Deliverables, shall be in accordance with the applicable Purchasing Instrument(s).
- 4.3. No Additional Fees. Other than as permitted by Section 4.2 (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 other than those set forth in the applicable Purchasing 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.
- 4.4. Reserved.
- 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. The first anniversary of Vendor's acceptance of the last payment from the Agency shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the Agency, except for those claims that Vendor may have after said period for payment by the Agency for Services performed hereunder.
- 4.6. Invoices. In the frequencies set forth in the applicable Purchasing Instrument, 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). 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. Any Purchasing Instrument executed pursuant to this Agreement will include a maximum number of hours. If required by the applicable Purchasing Instrument, the Agency may verify Vendor's performance/provisioning of Services and/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. The Agency shall also pay Vendor 1% interest on any past due amounts for the period from its due date until it is paid in full. 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 reasonably believes the invoice is inaccurate or incorrect in any way.
- 4.7. 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.

4.8. Set-off Against Sums Owed by Vendor. In the event Vendor owes the Agency any sum under the terms of this 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.

4.9. Reserved.

4.10. Reserved.

4.11. Administrative Fees. Without affecting the approved prices or discounts specified in the Agreement, Vendor shall provide to the State of Iowa a 1.00% administrative fee on all sales made against this agreement. The 1.00% administrative fee is to be paid quarterly to the Iowa Office of the Chief Information Officer, Business Service Division, 200 E. Grand Avenue, Des Moines IA 50309, 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

4.12. 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 Services and/or Deliverables shall be subject to the Agency's Acceptance Testing and Acceptance, as may be further described in a Purchasing Instrument(s). Upon completion of all work to be performed by Vendor with respect to any Services, Deliverable or group of Deliverables Vendor shall deliver a written notice to the Agency certifying that the foregoing meets and conforms to applicable Acceptance Criteria and is ready for the Agency to conduct Acceptance Tests. At the Agency's request, Vendor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency, as set forth in the applicable Purchasing Instrument. Within a reasonable period of time as set forth in the Purchasing Instrument after the Agency has completed its Acceptance Testing, the Agency shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to the Services and/or each Deliverable or any portion thereof, evaluated during such Acceptance Testing. If the Agency determines that the Services

and/or Deliverable(s) in whole or in part, satisfies its Acceptance Tests, the Agency shall provide Vendor with notice of Acceptance with respect to such Services and/or Deliverable(s). If the Agency determines that the Services and/or Deliverable(s) in whole or in part, fails to satisfy its Acceptance Tests, the Agency shall provide Vendor with notice of Non-Acceptance with respect to such Services and/or Deliverable(s). In the event the Agency provides notice of Non-Acceptance to Vendor with respect to any Services and/or Deliverable(s) Vendor shall correct such Services and/or Deliverable(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 Services and/or Deliverable(s). In the event the Agency determines after re-conducting its Acceptance Tests such Services and/or Deliverable(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 Services and/or Deliverable(s) within such period of time as the Agency may specify in a written notice to Vendor;
- 5.1.2. Refuse to accept such Services and/or Deliverable(s) without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such Services and/or Deliverable(s) or receive a refund of any fees or amounts already paid with respect to such Services and/or Deliverable(s);
- 5.1.3. Accept such Services and/or Deliverable(s) on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Agency's satisfaction, the Deficiencies or Errors present therein and any reduced value of such Services and/or Deliverable(s); or
- 5.1.4. To the extent that the non-complying Services/or Deliverable is a material component of the Services, terminate the applicable Purchasing Instrument or seek any and all available remedies, including damages. Notwithstanding any other provisions of this Agreement related to termination and provided that the non-complying Service(s) and/or Deliverable is not likely to be cured within a reasonable period of time, 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.

For Services and/or Deliverables that contain multiple individual components that may have their own Acceptance Testing process, the Agency's right to exercise the foregoing rights and remedies, including termination of the applicable Purchasing Instrument, shall remain in effect until Acceptance Tests are successfully completed to the Agency's satisfaction and the Agency has provided Vendor with written notice of Final Acceptance.

5.2. 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. 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 may be onsite or remote as needed during the course of work and as set forth in the applicable Purchasing Instrument, as force majeure events allow, and will be available either in person, by telephone, or by email to respond promptly during the business day to inquiries from the Agency. Any binding decisions made on behalf of the Vendor shall be made by VP-level personnel.

- 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 unless such problems are the result of or dependent upon the Agency's performance or fulfillment of its responsibilities. 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 under this Agreement.

6. Ownership and Intellectual Property.

- 6.1. Ownership of Vendor-Owned Deliverables. Except as specifically granted in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Vendor shall own all Deliverables that were independently and exclusively developed by Vendor prior to the Effective Date of this Agreement ("**Vendor-Owned Deliverables**").
- 6.2. Ownership and Assignment of Customer-Owned Deliverables. Vendor hereby irrevocably assigns, transfers, and conveys to the Agency all right, title and interest in and to Customer-Owned Deliverables. Vendor represents and warrants that the Agency shall acquire good and clear title to all Customer-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including Vendor Contractors and Vendor Personnel. Vendor 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 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. 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 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).
- 6.5. 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 assist the Agency in pursuing 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.
- 6.6. 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 as set forth in the applicable Purchasing Instrument, 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 copy right in and to such Customer-Owned Deliverables.
- 6.7. Customer Property. Vendor will not have access to Customer Property under this Agreement.
- 6.8. 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. Intellectual Property. Vendor represents and warrants that: (i) the Deliverables; and (ii) the Agency's use of, and exercise of any rights with respect to, the Deliverables, do not and

will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress, or other intellectual property right, proprietary right, or personal right of any Third Party. Vendor further represents and warrants there is no pending claim, litigation, or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret related to any Deliverables. Vendor shall inform the Agency in writing promptly upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret.

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

- 7.3. Compliance with Law. Vendor represents, warrants, covenants, and promises that Vendor, Vendor Contractors, and Vendor Personnel have complied with, and shall continue to comply with all Applicable Laws both generally and in connection with the performance of this Agreement, including the following:

- 7.3.1. 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 198.7 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.
- 7.3.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts, provided that the Agency makes Vendor aware of the requirements.
- 7.3.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement, provided that the Agency makes Vendor aware of the requirements.
- 7.3.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 7.3.5. 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.

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

7.3.7. To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the federal government, any terms or conditions required to be included in a contract between the Agency and a contractor pursuant to applicable federal laws, regulations, circulars, and bulletins, as such terms and conditions to be set forth in the applicable Purchasing Instrument.

7.3.8. IRS Pub 1075.

7.3.9. 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 7.3 (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 7.3 (Compliance with Law) that is not cured within thirty (30) days of receipt of notice from the Agency 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.

7.4. No Conflicts. Vendor represents, warrants, and covenants that it is unaware of any relationship existing 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.

7.5. Up to Date on Payments. Vendor represents and warrants that, to the best of its knowledge, 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.

7.6. Reserved.

7.7. 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.

7.8. 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.

- 7.9. EXCEPT FOR THE WARRANTIES CONTAINED WITHIN THIS AGREEMENT VENDOR DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE, OR WITH RESPECT TO DESIGN OR LATENT DEFECTS, SECURITY OF DATA OUTSIDE OF VENDOR'S MANAGED NETWORKS, OR COMPLIANCE WITH LAWS, REGULATIONS, OR OFFICIAL GOVERNMENT RELEASES APPLICABLE TO THE AGENCY.

8. Indemnification .

- 8.1 . General ly . 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 claims, actions, suits, liabilities, damages, losses, settlements, demands, judgments, reasonable costs, and any other expenses (including the costs, expenses, and reasonable attorney fees of counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including any 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 which constitutes the furnishing or making by Vendor, directly or indirectly, of any statement, representation, warranty, or certification in connection with this Agreement that is intentionally false, deceptive, or misleading;
 - 8.1.2. Any grossly 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, to the extent that such claim arises from Vendor, Vendor Contractor's or Vendor Personnel's gross negligence or willful misconduct;
 - 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 as they apply to Vendor 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, the Affordable Care Act, 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 involving any personal injury or damage to property (excluding software or data), including Customer Property, caused, in whole or in part, by Vendor's, Vendor Contractors', or Vendor Personnel's negligence or willful misconduct related to the work performed or any Deliverables provided under this Agreement, including any Security Breach;
 - 8.1.7. Vendor's, Vendor Contractor's, or Vendor Personnel's 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; provided that Client warrants that it has the right under such license terms, conditions or restrictions to disclose and provide

access to such Customer Property to Vendor, Vendor Contractor and/or Vendor Personnel;

- 8.1.8. Any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation, or security, including any Security Breach solely to the extent caused, in whole or in part, by Vendor, Vendor Contractors, or Vendor Personnel's gross negligence or willful misconduct;
- 8.1.9. Any claim for wages, benefits, compensation, insurance, discrimination, or other similar claims asserted against the Agency by any Vendor Personnel, or any claim, penalties, or fines made, levied, assessed, or imposed by another Governmental Entity against the Agency in any way related to or involving the misclassification of employees as independent contractors or any allegations or findings of the existence of a joint-employment relationship involving any Vendor Personnel; or
- 8.1.10. 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) or any use, access to, or the exercise of any rights with respect to any of the foregoing ("**Indemnified Items**") in fringes, 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 Indemnified Items, or any portion of them, become or are likely to become the subject of a Claim as provided in Section 8.1.10, then, in addition to paying any damages and attorney fees as required above, Vendor shall, at its option, either:
- 8.2.1. Immediately replace or modify the Indemnified Items, without loss of material functionality or performance, to make them non-infringing, or
- 8.2.2. Immediately procure for the Agency the right to continue using the Indemnified Items.
- 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 forty-five (45) days of notice of the Claim, in addition to any other remedies available to the Agency under this Agreement, at law, or in equity, the Agency shall have the right, at its sole option, to terminate this Agreement or any applicable Purchasing Instrument, in whole or in part and have Vendor refund to the Agency all associated fees, compensation or other amounts paid by the Agency.
- 8.3. Vendor's obligations under this Section 8 (Indemnification) are not limited to Third Party claims but shall also apply to any claims that either Party may assert against the other.
- 8.4. Vendor's duties, obligations, and liabilities as set forth in this Section 8 (Indemnification) shall survive termination of this Agreement for a period of one year following 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 any other Indemnitee.

9. Default and Termination.

9.1. Termination for Cause by the Agency . The Agency may terminate this Agreement or a Purchasing Instrument(s) upon written notice of Vendor ' s breach of any material term, condition, or provision of this Agreement or the applicable Purchasing Instrument, if such breach is not cured within thirty days following in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for any damages, including any liquidated damages. In addition, the Agency may terminate this Agreement or Purchasing Instrument upon reasonable advance notice and an opportunity to cure for any of the following reasons:

- 9.1.1. . Vendor , directly or in di rectly, furnished any statement, representation, warranty , or certification in connection with this Agreement that is fals e, deceptive, or materially incorrect or incomplete;
- 9.1.2. Vend or' s or Vendor Cont ractor ' s officers, di rectors, empl oyees, agents, subsidiaries, affili ates, contractors, or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malf easance, misfeasance, or bad faith;
- 9.1.3. Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;
- 9.1.4. Vendor terminates or suspends its business;
- 9.1.5. . Vendor's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;
- 9.1.6. Vendor or Vendor Personnel has failed to compl y with any applicable in ternat ional , federa l, state, or local laws, rules, ordinances, regu lations, standards, or orders when performing within the scope of this Agreement; or
- 9.1.7. The Agency determines or believes Vendor has engaged in conduct that has or may expose the Agency to material li ability ;
- 9.1.8. Vendor or any Deli verable(s) infringes or allegedly infringes or violates any patent, trademark , copyright, trade dre ss, or any other intellectual property right or proprietary right, or misapp ropriates or allegedly misappropriates a trade secret; or
- 9.1.9. Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shar eholder, or entity having or owning a controlling interest in Vendor:
 - 9.1.9.1. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking li quidation, reorgan ization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect;
 - 9.1.9.2. Filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seekin g liquidation. reorganization. or other relief under any bankruptcy , insolvency. or other similar law now or hereafter in effect with respect to it or its debts;

9.1.9.3. Consenting to any relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

9.1.9.4. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

9.1.9.5. Making an assignment for the benefit of creditors;

9.1.9.6. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or

9.1.9.7. Taking any action to authorize any of the foregoing.

The right to terminate this Agreement or applicable Purchasing Instrument pursuant to this Section 9.1 (Termination for Cause by the Agency) shall be in addition to and not exclusive of other remedies available to the Agency and, notwithstanding any termination, the Agency shall be entitled to exercise any other rights and pursue any remedies available under this Agreement, in law, at equity, or otherwise. Vendor shall notify the Agency in writing if any of the foregoing events occur that would authorize the Agency to immediately terminate this Agreement or a Purchasing Instrument.

9.2. Termination for Cause by Vendor. Vendor may only terminate an applicable Purchasing Instrument upon written notice of the breach by the Agency of any material term, condition, or provision of this Agreement related thereto, if such breach is not cured within thirty (30) days of the Agency's receipt of Vendor's written notice of breach.

9.3. Termination for Convenience. Following sixty (60) days written notice, the Agency may terminate this Agreement or a Purchasing Instrument, in whole or in part, for convenience without the payment of any penalty or incurring any further obligation or liability to Vendor, except for payments due and owing up to the date of termination. Termination for convenience may be for any reason or no reason at all. This Agreement shall remain in effect with respect to any outstanding Purchasing Instruments.

9.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, the Agency shall, upon written notice, have the right to terminate this Agreement or a Purchasing Instrument, in whole or in part, without penalty or liability and without any advance notice as a result of any of the following:

9.4.1. The legislature, governor, or other applicable governing body fail, in the sole opinion of the Agency, to appropriate funds sufficient to allow the Agency to either meet its obligations under this Agreement or the applicable Purchasing Instrument or to operate as required and to fulfill its obligations under this Agreement or the applicable Purchasing Instrument;

9.4.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment

hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion;

- 9.4.3. If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified;
- 9.4.4. If the Agency's duties, programs, or responsibilities are modified or materially altered; or
- 9.4.5. If there is a decision of any court, administrative law judge, or arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Agreement or the applicable Purchasing Instrument.

- 9.5. Limitation of Payment Obligations. In the event of a termination of this Agreement or a Purchasing Instrument for any reason (except for termination by the Agency pursuant to Section 9.1 (Termination for Cause by the Agency)), the Agency shall pay only those amounts, if any, due and owing to Vendor for Services and/or Deliverables up to and including the date of termination of this Agreement or the applicable Purchasing Instrument and for which the Agency is otherwise obligated to pay pursuant to this Agreement; provided however, that the Agency's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 9.5 (Limitation of Payment Obligations) in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts otherwise withheld by the Agency in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, the Agency shall not be liable, under any circumstances, for any of the following:

- 9.5.1. The payment of unemployment compensation to Vendor Personnel;
- 9.5.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
- 9.5.3. Any costs incurred in the normal course of business by Vendor, Vendor Contractors, or Vendor Personnel in the performance of the Agreement, including startup costs, overhead, or other costs associated with the performance of the Agreement;
- 9.5.4. Any damages or other amounts associated with the loss of prospective profits, anticipated sales, or goodwill made in connection with this Agreement; or
- 9.5.5. Any taxes Vendor may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes, or property taxes.

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

- 9.6.1. Except as otherwise directed by the Agency pursuant to Section 9.6.6, cease work under this Agreement or the applicable Purchasing Instrument and take all necessary or appropriate steps to limit disbursements and minimize costs, and

furnish a report, within thirty (30) days of the date of notice of termination, expiration, or request, describing the status of all work performed under the Agreement and such other matters as the Agency may require.

9.6 As directed by the Agency, immediately cease using and return to the Agency any Customer Property provided by the Agency, directly or indirectly, to Vendor or Customer-Owned Deliverables prepared or developed by Vendor for the Agency hereunder.

9.6 Comply with any directions related to Vendor's destruction or return of Customer Data in accordance with Section I 0.1.2 (Destruction or Return of Customer Data).

9.6 Immediately return or refund to the Agency any payments made by the Agency for Deliverables and/or Services that were not rendered or provided by Vendor, including as it relates to any pre-paid fees.

9.6 Immediately deliver to the Agency any and all fully paid-up Deliverables, including Customer-Owned Deliverables for which the Agency has a property interest that is in the possession of or under the control of Vendor, Vendor Contractors, or Vendor Personnel in whatever stage of development or form at the time of such termination, expiration, or request.

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. 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 using a reasonable degree of care and use and permit use of Customer Data solely for the purposes of providing Services and/or Deliverables 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 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 and/or Deliverables 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 certify that the tax 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 certify that any tax information remaining in any storage component shall be safeguarded to prevent unauthorized disclosures until it has been purged. Once all tax information processed and output generated has been completely purged, the contractor shall submit a signed certification to the Department 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.

- 10.1.3. *Compelled Disclosures.* In the event that a subpoena or other legal process is served upon the contractor for records containing tax information, the contractor shall promptly notify the Department and cooperate with the Department and the IRS in any lawful effort to protect the tax 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 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, provided that the Agency agrees to maintain the same level of protection for such Confidential Information as it did during the term of this Agreement).

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 expense and within a reasonable 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 necessary to ensure Customer Data is stored and maintained in its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon the Agency's request, take all actions requested by the Agency to assist it in complying with any federal, state, or local record retention requirements, policies, procedures, or other similar requirements.

I 0.4. Non-Exclusive Equitable Remedy. Each Party acknowledges and agrees that due to the unique nature of Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or Third Parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party will be entitled to 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 IO (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.

I 0.5. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section IO (Confidentiality) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

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

11.1. Data Protection. Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data, Customer Property, or any related Deliverables.

11.2. Personnel Safeguards.

11.2.1. *Background Checks*.

11.2.1.1. *Floor*. To the extent applicable, 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.

11.2.1.1.1. 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:

- 11.2.1.1.1. The nature of the conviction.
- 11.2.1.1.2. The length of time between the offense and the employment decision.
- 11.2.1.1.3. Number of offenses.
- 11.2.1.1.4. Relatedness of the conviction to the duties and responsibilities of the position.
- 11.2.1.1.5. Efforts at rehabilitation.
- 11.2.1.1.6. Accuracy of the information that the applicant provided on the employment application.

11.2.1.2. 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.

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

11.2.1.4. *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.

11.2.1.5. 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.

11.2.2. *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. 2.3. *Non-disclosure/Confidentiality Agreements.* To the extent applicable, Vendor Personnel may be required to sign a confidentiality agreement substantially similar to the Agency's standard confidentiality or non-disclosure agreement(s), or other confidentiality or non-disclosure agreement(s) as set forth in the applicable Purchasing Instrument, including as may be required by applicable law, rule, regulation, or policy.

- 11 .3. 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 negotiate with the Agency in good faith any 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.
- 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.
- 1 2.4.2. 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 and/or Deliverables hereunder.
123. 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.
124. 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 any income earned in connection with its performance of this Agreement.
125. 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) .
- 1 2.4.6. 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) create an actual or potential conflict of interest ; (d) violate any intellectual property rights or interests of the Agency; (e) intentionally expose the Agency to an increased risk of experiencing a Security Breach or other cyber event.
- 1 2.4.7. 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.
- 1 2.4.8. 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. Except as otherwise expressly stated herein, there are no Third Party beneficiaries to this Agreement.
- 12.7. Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Agency or its officers, directors, employees, officials, and agents, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's designated agent. If for any reason Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Agency with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Agency. Nothing in this provision will alter the right of the Agency to serve process in any other manner permitted by law. This Section 12.7 (Choice of Law and Forum) shall survive termination of this Agreement.
- 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. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale, or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the Agency with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale, or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the Agency. Vendor further agrees that it may not assign, pledge

as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Vendor under this Agreement.

12.9. Use of Third Parties.

12.9.1. None of the Services and/or Deliverables, to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party, including Vendor Contractors, without the prior written consent of the Agency, such consent not to be unreasonably withheld. 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. 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 and/or Deliverables 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. All subcontracts shall contain provisions which allow the Agency or its designee to access the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. 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. 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 the following Vendor Contractor's for the following purposes:

12.9.2.1. As of the Effective Date, there will be no subcontractors utilized under this Agreement.

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.

12.11. ~~Supersedes Former Agreements~~. This Agreement supersedes all prior Agreements between the Agency and Vendor for the Services and/or Deliverables 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. Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice (identified below) at the address of the Party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the Agency:

State of Iowa Office of the Chief Information Officer

200 E. Grand Avenue

Des Moines, Iowa 50309

If to Vendor:

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. Both parties will work together in good faith to meet scheduled requirements 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 Agency's requirements and requests in all respects, including working to meet any specific 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, 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 an unreasonable charge or seek payment for any unreasonable 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). Auditors shall not be a competitor of Vendor and shall agree to Vendor's standard confidentiality terms.
- 12.20. Headings or Captions and Terms. The section headings or captions set forth in this Agreement are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation" or "but not limited to." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 12.21. Multiple Counterparts and Electronic Signatures. 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, including any amendments to any of the foregoing, may be executed in several

counterparts, all of which when taken together shall constitute one contract binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each such document(s) shall constitute an original. Signatures on such documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures, with such scanned and electronic signatures having the same legal effect as original signatures. Such documents may be accepted, executed, or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("**E-Sign Act**"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act, codified at Iowa Code chapter 554D ("**UETA**"), or any other applicable state law, rule, policy, standard, directive, or order. Any document accepted, executed, or agreed to in conformity with such laws, rules, policies, standards, directives, or orders will be binding on the signing Party as if it were physically executed. Vendor acknowledges and agrees it will not contest the validity or enforceability of any such document(s), including under any applicable statute of frauds, because they were accepted, signed, or transmitted in electronic form. Vendor further acknowledges and agrees that it will not contest the validity or enforceability of a signed scanned or facsimile copy of any such document(s) on the basis that it lacks an original handwritten signature, or on the basis that the Parties were not signatories to the same counterpart.

- 12.22. **Not a Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.
- 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.** Neither Party shall be in default under this Agreement if performance is prevented, delayed, or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance, epidemics and/or pandemics and any consequences thereof, and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties. "Force majeure" does not include: financial difficulties of Vendor or Vendor Contractors; claims or court orders that restrict Vendor's or Vendor

Contractor's ability to perform or deliver the Services and/or Deliverables contemplated by this Agreement ;strikes; labor unrest; supply chain disruptions ; internet fail ure; power failures; hacker attacks; denial of service attacks; virus or other malicious software attacks or infections; or Security Breach, except to the extent that the foregoing could not have otherwise been prevented by commercially reasonable actions on the part of Vendor. If delay results from a Vendor Contractor's conduct, negligence, or failure to perform, Vendor shall not be excused from compliance with the terms and obligations of Vendor unless the Vendor Contractor is prevented from timely performance by a "force majeure" as defined in this Agreement. If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately use its commercially reasonable efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The Party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other Party of the occurrence and reason for the delay. The Parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which Vendor's performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

- 12.27. Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.
- 12.28. 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 audit 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 , exhibit its, and other like documents. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will use reasonable efforts to implement any recommendations requested by the Agency or its designee. Vendor shall not impose any unreasonable charge or fee in connection with any contract compliance audit.
- 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 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 fully 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 as such license terms, conditions or restrictions have been made available to Vendor at the time of their effectiveness on Vendor. 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. . Attorney's Fees and Expenses. In the event Vendor defaults on any of its obligations under this Agreement, Vendor shall pay to the Agency all reasonable costs and expenses (including the costs, expenses, and attorney fees of other counsel retained by or on behalf of the Agency) incurred by the Agency in enforcing this Agreement or any of its rights and remedies with respect thereto.
- 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 reasonable efforts to prevent intentional damage to all such property and shall, at the Agency's request, restore damaged property to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Agency. In addition, at the Agency's request, Vendor will reimburse the Agency for any loss or damage to such property caused by Vendor, Vendor Contractors, or Vendor Personnel, except for reasonable wear and tear. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property, and intellectual property rights of the Agency or State of Iowa.
- 12.36. Liquidated Damages. There shall be no liquidated damages under this Agreement or any Purchasing Instrument executed hereunder.

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

13. Limitation of Liability. Except as otherwise set forth herein, and only to the extent permitted by and not prohibited by applicable laws, rules and regulations: (a) the maximum liability of either Party under this Agreement shall be one (1) times the Contract Value (Contract Value is defined as the aggregate total compensation to be paid to Vendor under the entire term of Project which Project may be more fully described in a project charter or other similar document, and including all Purchasing Instruments thereunder); and (b) 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 any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:

13.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or the gross negligence, or bad faith of Vendor, Vendor Contractors, or Vendor Personnel;

13.2. Death, bodily injury, or damage to real or personal property;

13.3. Any contractual obligations of Vendor pertaining to indemnification; intellectual property; liquidated damages; compliance with Applicable Laws; or confidential information;

13.4. Any claims arising under provisions of the Agreement calling for indemnification of the State of Iowa or any Indemnitee for third-party claims against the State of Iowa for bodily injury to persons or for damage to real or tangible personal property caused by Vendor's, Vendor's Contractor's, or Vendor Personnel's negligence or willful conduct.

13.5. Survives Termination. This Section 13 (Limitation of Liability) shall survive termination or expiration of the Agreement.