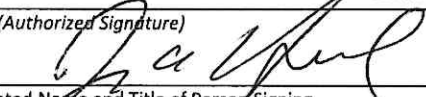


## Iowa Department of Administrative Services Contracts Declaration & Execution Page


Title of Contract: Document Destruction Services	Bid Proposal Number 005-RFB-2348-2026	Contract Number 26239
This Agreement is entered into between the State of Iowa (by and through its agency, the Department of Administrative Services) and the Contractor named below:		
State Agency's Name: Department of Administrative Services		
Contractor's Name: DataShield Corporation		
Initial Contract Term: This Contract shall commence on the date of the last signature affixed below (the "Effective Date") and shall continue for a period of one (1) year from that date, unless terminated earlier in accordance with the terms of this Contract.		Annual Extensions: 5
The parties agree to comply with the terms and conditions and attachments which are by this reference made a part of the Agreement:		
Section 1 – Terms & Conditions .....		Page 2
Section 2 – Scope of Work.....		Page 27
Section 3 – Pricing.....		Page 28
Section 4 – Contacts .....		Page 29
Section 5 – Terms and Conditions for Federal Compliance.....		Page 30
Section 6 – IRS Publication 1075 Additional Information.....		Page 37
Section 7 – FTI and State Tax Information.....		Page 40
Section 8 – DHS BAA.....		Page 44

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

**Contractor: DataShield Corporation**

By (Authorized Signature) 	Date Signed 2026-02-17
Printed Name and Title of Person Signing James A. Hood, President	
Address 3838 S. 108th #100 Omaha NE 68144	

**State of Iowa: Department of Administrative Services – Central Procurement**

By (Authorized Signature) 	Date Signed 02/17/2026
Printed Name and Title of Person Signing Craig Trotter – Sr. Statewide Procurement Officer	
Address Iowa Department of Administrative Services, Hoover State Office Building, Level 3, 1305 East Walnut Street, Des Moines, IA 50319	

**SECTION 1**  
**Terms & Conditions**

**1.1 Definitions**

The following words shall be defined as set forth below:

**“Acceptance”** means that the Agency has determined that one or more Deliverables satisfy the Agency’s Acceptance Tests. Final Acceptance means that the Agency has determined that all Deliverables satisfy the Agency’s Acceptance Tests. Non-acceptance means that the Agency has determined that one or more Deliverables have not satisfied the Agency’s Acceptance Tests.

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

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

**“Bid Proposal” or “Proposal”** means the Contractor’s proposal submitted in response to the RFP.

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

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

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

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

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

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

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

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

**1.2 Availability of Contract to Other Entities**

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

**1.3 Duration of Contract**

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

**1.4 Scope of Work**

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

**1.5 Compensation**

**1.5.1 Pricing**

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

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

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

**1.5.2 Reimbursement Expenses**

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

**1.5.3 Withholding Payments**

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

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

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

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

**1.5.4 Setoff Against Sums Owed by the Contractor**

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

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

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

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

**1.6 Termination**

**1.6.1 Immediate Termination by the State**

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

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

**1.6.1.2** The State determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;

**1.6.1.3** The Contractor fails to comply with confidentiality laws or provisions;

**1.6.1.4** The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

**1.6.2 Termination for Cause by the Agency**

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

**1.6.2.1** Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;

**1.6.2.2** Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

**1.6.2.3** Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;

**1.6.2.4** Contractor terminates or suspends its business;

**1.6.2.5** Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;

**1.6.2.6** Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;

**1.6.2.7** The Agency determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Agency or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;

**1.6.2.8** Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;

**1.6.2.9** Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or

**1.6.2.10** Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:

**1.6.2.10.1** Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

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

**1.6.2.10.3** Making an assignment for the benefit of creditors;

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

**1.6.2.10.5** Taking any action to authorize any of the foregoing. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

### **1.6.3 Termination upon Notice**

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

**1.6.4 Termination Due to Lack of Funds or Change in Law**

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

- 1.6.4.1** The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
- 1.6.4.2** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or
- 1.6.4.3** If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or
- 1.6.4.4** If the Agency's duties, programs or responsibilities are modified or materially altered; or
- 1.6.4.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract. The Agency shall provide Contractor with written notice of termination pursuant to this section.

**1.6.5 Limitation of the State's Payment Obligations**

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

- 1.6.5.1** The payment of unemployment compensation to Contractor's employees;

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

**1.6.6 Contractor's Termination Duties**

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

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

**1.6.7 Termination for Cause by Contractor**

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

## **1.7 Confidential Information**

### **1.7.1 Access to Confidential Information**

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

### **1.7.2 No Dissemination of Confidential information**

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

### **1.7.3 Subpoena**

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

### **1.7.4 Reporting of Unauthorized Disclosure**

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

### **1.7.5**

If Contractor requests confidential treatment with respect to any information or material contained within its Bid Proposal and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. Agency may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Agency determines the information or material is not confidential under Iowa or other applicable law, or if Contractor failed to properly

request confidential treatment under the RFP, or if Contractor rescinds its request for confidential treatment.

**1.7.6 Survives Termination**

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

**1.8 Indemnification**

**1.8.1 By the Contractor**

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

**1.8.1.1** Any breach of this Contract;

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

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

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

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

**1.8.2 Survives Termination**

Contractor's duties and obligations under this section shall survive the termination of this Contract and shall apply to all acts or omissions taken or made in connection with the performance of this Contract regardless of the date any potential claim is made or discovered by the Agency or any other Indemnified Party.

**1.9 Insurance**

**1.9.1 Insurance Requirements**

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

**1.9.2 Types and Amounts of Insurance Required**

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

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

**1.9.3 Certificates of Coverage**

Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract and any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the Agency. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days’ prior written notice to the

Agency. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

**1.9.4 Waiver of Subrogation Rights**

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

**1.10 Project Management & Reporting**

**1.10.1 Project Manager**

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

**1.10.2 Review Meetings**

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

**1.10.3 Reports**

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

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

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

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

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

**1.10.4 Problem Reporting Omissions**

The Agency's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Agency may have. The Agency's failure to identify the extent of a

problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance or damages under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

#### **1.10.5 Change Order Procedure**

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

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

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

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

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

#### **1.11 Legislative Changes**

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

#### **1.12 Intellectual Property**

##### **1.12.1 Ownership and Assignment of Other Deliverables**

Contractor agrees that the State and Agency shall become the sole and exclusive owners of all Deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the

Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by Agency, upon completion or termination of this Contract, Contractor will immediately turn over to Agency all Deliverables not previously delivered to Agency, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Agency.

**1.12.2 Waiver**

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

**1.12.3 Further Assurances**

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

**1.13 Warranties**

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

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

**1.13.2 Contractor represents and warrants that:**

(1) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party; (2) Contractor has not previously and will not grant any rights in any

Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and (3) the Agency shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

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

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

known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

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

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

**1.13.7 Obligations Owed to Third Parties**

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

**1.14 Acceptance Testing**

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

to satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the Agency provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall correct and repair such Deliverable and submit it to the Agency within ten (10) days of Contractor's receipt of notice of Non-acceptance so that the Agency may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Agency determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Contractor has attempted to correct or repair pursuant to this section, that such Deliverable fails to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to:

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

## **1.15 Contract Administration**

### **1.15.1 Independent Contractor**

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

**1.15.2 Incorporation of Documents**

To the extent this Contract arises out of an RFP, the parties acknowledge that the Contract consists of these contract terms and conditions as well as the RFP and the Bid Proposal. The RFP and the Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by the Contractor to the provisions of the RFP shall be incorporated by reference into the Contract unless the Agency has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict between the Contract, the RFP and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) the Bid Proposal.

**1.15.3 Intent of References to Bid Documents**

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

**1.15.4 Compliance with the Law; Nondiscrimination in Employment**

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

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

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

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

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

**1.15.5 Procurement**

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

**1.15.6 Non-Exclusive Rights**

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

**1.15.7 Non-Supplanting Requirement**

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

**1.15.8 Compliance with Iowa Code chapter 8F**

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

**1.15.9 Amendments**

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

**1.15.10 Third Party Beneficiaries**

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

**1.15.11 Use of Third Parties**

The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Agency in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Agency reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains

responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

**1.15.12 Choice of Law and Forum**

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

**1.15.13 Assignment and Delegation**

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

**1.15.14 Integration**

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

**1.15.15 Headings or Captions**

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

**1.15.16 Not a Joint Venture**

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

**1.15.17 Joint and Several Liability**

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally

liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

**1.15.18 Supersedes Former Contracts or Agreements**

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

**1.15.19 Waiver**

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

**1.15.20 Notice**

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

**1.15.20.1** At the time it is actually received; or,

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

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

**1.15.21 Cumulative Rights**

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

**1.15.22 Severability**

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

**1.15.23 Time is of the Essence**

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

**1.15.24 Authorization**

Contractor represents and warrants that:

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

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

**1.15.25 Successors in Interest**

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

**1.15.26 Records Retention and Access**

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

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

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

**1.15.26.3** The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Agency.

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

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

**1.15.27 Audits or Examination of Records**

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

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

**1.15.27.3** The Agency may require, at any time and at its sole discretion, that recipients of non-federal and/or federal funds have an audit performed. The Contractor shall submit one (1) copy of the audit report to the Agency within thirty (30) days of its issuance, unless specific exemption is granted in writing by the Agency. The Contractor shall submit with the audit report a copy of the

separate letter to management addressing non-material findings, if provided by the auditor. The Contractor may be required to comply with other prescribed compliance and review procedures.

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

**1.15.28 Qualifications of Staff**

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

**1.15.29 Solicitation**

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

**1.15.30 Obligations Beyond Contract Term**

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

**1.15.31 Counterparts**

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

**1.15.32 Delays or Impossibility of Performance**

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force

majeure” as defined in this Contract. If a “force majeure” delays or prevents the Contractor’s performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

**1.15.33 Suspensions and Debarment**

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

**1.15.34 Conflict of Interest**

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

**1.15.35 Certification Regarding Sales and Use Tax**

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

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

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

**1.15.37 Repayment Obligation**

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

**1.15.38 Further Assurances and Corrective Instruments**

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

**1.15.39 Reporting Requirements**

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

**1.15.40 Immunity from Liability**

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

**1.15.41 Public Records**

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

**1.15.42 Use of Name or Intellectual Property**

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

**1.15.43 Taxes**

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

**1.15.44 No Minimums Guaranteed**

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

## **SECTION 2 SCOPE OF WORK**

### **2.1 Scope of Work**

The Contractor shall provide secure document shredding services for State agencies and Political Subdivision on an as-needed basis. Services shall include the secure collection, transportation, shredding, recycling, and documentation of confidential and non-confidential paper records. Shredding services may be performed either on-site using mobile shredding equipment or off-site at a secure destruction facility, as directed by the Agency. All services must ensure the confidentiality and integrity of Agency information from initial collection through final destruction.

### **2.2 Service Requirements**

#### **2.2.1 General Services**

The Contractor Shall:

- a. Provide secure, reliable, and compliant document shredding services to State Agencies and Political Subdivisions.
- b. Supply all necessary equipment, labor, and materials.
- c. Maintain confidentiality and security of all documents from the point of collection through final destruction

#### **2.2.2 Shredding Methods**

The Contractor Shall:

- a. Provide cross-cut, micro-cut, or equivalent secure destruction that meets or exceeds NAID and federal destruction standards.
- b. Bidder must be able to provide confidential destruction services based on the IRS Publication 1075. Attachment # 2.
- c. Offer on-site (mobile) shredding, off-site shredding, or both, as specified by the Agency or Political Subdivision.
- d. Ensure destroyed materials are irreversible and unreadable.

#### **2.2.3 Security and Chain of Custody**

The Contractor Shall:

- a. Maintain a secure chain of custody from pickup through destruction.
- b. Ensure employees undergo background checks appropriate for handling confidential material.
- c. Use locked collection containers when required.

#### **2.2.4 Equipment and Containers**

The Contractor Shall:

- a. Provide collection containers in various sizes as needed.
- b. Maintain containers in good, clean, and safe working condition.
- c. Provide containers at no additional cost unless otherwise specified.

#### **2.2.5 Scheduling and Pickup**

The Contractor Shall:

- a. Offer scheduled, on-call, and emergency pickup services.
- b. Meet required service timeframes (e.g., 48-72 hours for on-call service).
- c. Document all pickups electronically, including date, time, location, and vehicle/driver ID

#### **2.2.6 Compliance**

The Contractor Shall comply with, at a minimum:

- a. The Health Insurance Portability and Accountability Act (HIPAA), when applicable.

- b. The Fair and Accurate Credit Transactions Act (FACTA).
- c. National Association for Information Destruction (NAID) standards.

### **2.2.7 Reporting and Documentation**

The Contractor Shall:

- a. Provide chain of custody documentation as requested by the Agency.
- b. Provide Certificates of Destruction as requested by the Agency.
- c. Provide monthly or quarterly activity reports upon request.

### **2.2.8 Personnel Requirements**

The Contractor Shall:

- a. Ensure all staff handling State documents are trained in secure destruction procedures.
- b. Require driver/technician uniforms and visible identification.

### **2.2.9 Account Management**

The Contractor Shall:

- a. Establish and maintain separate, unique account numbers for each State agency and for each individual service location, as designated by the State.
- b. Ensure each account number is used for tracking services, scheduling, reporting, and billing specific to that agency and location.
- c. Provide invoices that clearly reference the assigned account number, agency name, service location, service date(s), and services performed
- d. Provide the ability to view and pay invoices online.
- e. Provide an account manager for the State of Iowa account.
- f. Ensure only authorized contacts make changes to agency accounts.
- g. Must be able to communicate any schedule changes to agency contacts.

## **2.3 Performance Measures**

Performance-based measures are required in all State contracts pursuant with Iowa Code §8.47. The Contractor's performance shall be evaluated based on adherence to established performance standards, timely completion of deliverables, responsiveness, and the overall quality and usefulness of work products. The Agency reserves the right to assess performance at any time during the contract term and to take appropriate action if performance does not meet expectations.

### **2.3.1 Performance Standards**

Key Performance criteria include, but not limited to:

- a. Timeliness – All deliverables are met unless modified by the awarded Contract or written agreement.
- b. Quality of Deliverables – Reports and analyses are complete, accurate, data-driven, and presented in a clear professional format acceptable to the Agency.
- c. Responsiveness – Contractor provided timely communication and resolves Agency feedback withing agreed-upon timeframes.
- d. Stakeholder Engagement – Contractor successfully coordinates with designated stakeholders, ensures validation of findings, and documents engagement activities.
- e. Usability of Findings – Final deliverables include actionable recommendations supported by data analysis that can inform Agency policy and funding decisions.

### **2.3.2 Measurement Guidelines**

Both parties shall maintain proper documentation to support compliance with the established performance standards and deliverables. Documentation must be made available to the Agency upon request for verification purposes.

### **2.3.3 Remedies for Non-Performance**

The Agency reserves the right to withhold payment for deliverables that do not meet the specified performance standards until deficiencies are corrected to the Agency's satisfaction. Continued failure to meet performance standards may result in additional remedies as outlined in the Contract Terms and Conditions, up to and including contract termination.

**SECTION 3  
PRICING**

**3.1** See Attached Pricing – DataShield – Iowa Pricing – Effective Feb 2026

## SECTION 4 CONTACTS

### 4.1 Contractor:

DataShield Corporation  
Brooks Cox  
402-898-5000  
[bcox@datashieldcorp.com](mailto:bcox@datashieldcorp.com)

### 4.2 State of Iowa

Department of Administrative Services  
Craig Trotter  
515-322-8593  
[craig.trotter@iowa.gov](mailto:craig.trotter@iowa.gov)

**SECTION 5**  
**Terms and Conditions for Federal Compliance**

**CONTRACT PROVISIONS FOR CONTRACTS UNDER FEDERAL AWARDS**

State of Iowa agencies receive federal funding. As a recipient of federal funds, State of Iowa agencies and their subrecipients must adhere to federal legislation passed by Congress as well as codified regulations implemented through administrative requirements when executing the funding.

Specific to the Code of Federal Regulations (CFR) Title 2 Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, specific language must be included in agreement articles, contracts, memorandums of understanding, and letters of agreement. Detailed in 2 CFR Part 200 Appendix II, in addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by a non-Federal entity under the Federal awards must contain provisions covering the following, as applicable.

**Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Such disclosures are forwarded from tier to tier, up to the non-Federal award.

**Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended**

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States")**

The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)**

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**Debarment and Suspension (Executive Orders 12549 and 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**Domestic Preferences for Procurements**

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**Equal Employment Opportunity**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**Procurement of Recovered Materials**

In the performance of this contract, the contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1)

Competitively within a timeframe providing for compliance with the contract performance schedule; (2) Meeting contract performance requirements; or (3) At a reasonable price. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

#### **Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### **Termination**

##### **Immediate Termination by the State**

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

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

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

#### **Termination for Cause by the Agency**

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

- Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- Contractor terminates or suspends its business; Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- The Agency determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Agency or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
- Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:
  - Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other

proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

- Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- Making an assignment for the benefit of creditors;
- Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or
- Taking any action to authorize any of the foregoing. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

#### **Termination upon Notice**

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

#### **Termination Due to Lack of Funds or Change in Law**

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

- The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
- If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or
- If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or
- If the Agency's duties, programs or responsibilities are modified or materially altered; or
- If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract. The Agency shall provide Contractor with written notice of termination pursuant to this section.

#### **Limitation of the State's Payment Obligations**

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

Agency to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

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

#### **Contractor's Termination Duties**

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

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

#### **Termination for Cause by Contractor**

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

#### **ACKNOWLEDGEMENTS AND ASSURANCES**

##### **Access to Records**

The following access to records requirements applies to this contract: (1) The contractor agrees to provide the State of Iowa, the federal awarding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the federal awarding agency or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with the Disaster Recovery Act of 2018, The State of Iowa and the contractor acknowledge and agree that no language in

this contract is intended to prohibit audits or internal reviews by the federal awarding agency or the Comptroller General of the United States.

**Awarding Agency Seal, Logo, and Flags**

The contractor shall not use the awarding agency's seal(s), logos, crests, or reproductions of flags or likenesses of agency officials without specific agency preapproval.

**Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgement that Federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, federal awarding policies, procedures, and directives.

**No Obligation by Federal Government**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**Program Fraud and False or Fraudulent Statements or Related Acts**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**SECTION 6**  
**IRS Publication 1075 Additional Information**

**Destruction Methods – Paper Format**

The following guidelines must be observed when destroying paper FTI.

**Burning** – The material must be burned in an incinerator that produces enough heat to burn the entire bundle, or the bundle must be separated to ensure that all pages are incinerated.

**Shredding** – Destroy paper using cross cut shredders which produce particles that are .04 inches by .02 inches in size, or smaller, or pulverize/disintegrate paper materials using disintegrator devices equipped with a 3/32-inch security screen.

If shredding deviates from the above specification, FTI must be safeguarded until it reaches the stage where it is rendered unreadable through additional means, such as burning or pulping.

**Performance**

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- 1) All work will be performed under the supervision of the contractor.
- 2) The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- 3) FTI in hardcopy and electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure of FTI to anyone other than the contractor or contractor's officers or employee authorized is prohibited.
- 4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products require the same level of protection as required for the source material.
- 5) The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- 6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts will provide the agency with a statement containing the date of the destruction, description of materials destroyed, and the destruction method.
- 7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

- 8) No work involving FTI furnished under this contract will be subcontracted without prior written approval of the IRS.
- 9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- 10) To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.
- 11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- 12) For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- 13) The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

#### **Criminal/Civil Sanctions**

- 1) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- 2) Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- 3) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to

any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- 4) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **Inspection**

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

**SECTION 7**  
**FTI and State Tax Information**

- I. Access to Confidential Information. The contractor's officers, employees, agents, and subcontractors may have access to federal tax information (FTI) and state tax information, including returns and return information maintained by the Iowa Department of Revenue (IDR). Access is granted only to the extent necessary to carry out the contractor's responsibilities under the contract.
- II. Performance. In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:
  1. All work will be performed under the supervision of the contractor.
  2. The contractor shall presume all information received from IDR pursuant to this contract is confidential under Internal Revenue Code section 6103 and Iowa Code sections 422.20 and 422.72, unless otherwise designated by IDR.
  3. The contractor and contractor's officers or employees to be authorized access to FTI or state tax information must meet background check requirements defined in Internal Revenue Service (IRS) Publication 1075. The contractor will maintain a list of officers and employees with authorized access to FTI or state tax information. Such list will be provided to IDR and, upon request, to the IRS.
  4. The contractor will employ a formal sanction process for officers or employees failing to comply with established information security policies and procedures for handling FTI and state tax information. The contractor will notify IDR of any sanctions issued under this process within 72 hours of issuance.
  5. FTI or state tax information, in hardcopy or electronic format, shall be used only for the purpose of carrying out the provisions of this contract. FTI or state tax information, in any format, shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI or state tax information to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
  6. FTI and state tax information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
  7. No FTI or state tax information may be accessed by contractor or contractor's officers, employees, agents, or subcontractors located offshore or via any information systems located offshore.
  8. The contractor will certify that FTI and state tax information processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI or state tax information in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
  9. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI or state tax information will be given to IDR. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide IDR with a statement containing the date of destruction, description of material destroyed, and the destruction method.

10. All computer systems receiving, processing, storing, or transmitting FTI or state tax information must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI or state tax information.
11. No work involving FTI or state tax information furnished under this contract will be subcontracted without the prior written approval of the IRS and IDR.
12. Any FTI or state tax information supplied by the Department to the contractor or contractor's officers, employees, agents, or subcontractors or created by the contractor or contractor's officers, employees, agents, or subcontractors in the course of the performance of its duties under this Contract shall be considered the property of the Department.
13. Contractor will ensure that the terms of FTI and state tax information safeguards described herein are included, without modification, in any approved subcontract for work involving FTI or state tax information.
14. To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI or state tax information, the contractor shall assume toward the subcontractor all obligations, duties, and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.
15. In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
16. In the event that a subpoena or other legal process is served upon the contractor for records containing FTI or state tax information, the contractor shall promptly notify IDR and cooperate with IDR in any lawful effort to protect the FTI or state tax information.
17. The contractor shall immediately report to the Department any unauthorized disclosure or security breach of FTI or state tax information or any security incident. A security incident is a discovery of a data breach, loss of device, compromise of system or web site. A security incident includes, but is not limited to the following events:
  - i. Loss of hardware or paper documents containing FTI or state tax information;
  - ii. Evidence of tampering with FTI or state tax information;
  - iii. Denial of service attack on the contractor;
  - iv. Web site defacement;
  - v. Unauthorized access or repeated attempts at unauthorized access (from either internal or external sources);
  - vi. Social engineering incidents;
  - vii. Virus attacks which adversely affect servers or multiple workstations;
  - viii. Other incidents that could undermine confidence and trust in FTI or state tax information
18. The contractor shall provide to the Department a written description of its policies and procedures to safeguard FTI or state tax information upon request. Policies of

confidentiality shall address, as appropriate, FTI or state tax information conveyed in verbal, written, and electronic formats.

19. The contractor shall complete, upon request, a security risk assessment questionnaire annually, or provide a third-party report, as part of a certification process with the Department.
20. The use of personally owned computers for accessing FTI or state tax information is strictly prohibited.
21. If there is a breach by the contractor of any “personal information” as that term is defined and governed by Iowa Code chapter 715C, the contractor shall be responsible for complying with any applicable provisions of Iowa Code chapter 715C, including but not limited to any applicable consumer notification requirements.
22. For purposes of this contract, the term “contractor” includes any officer or employee of the contractor with access to or who uses FTI or state tax information, and the term “subcontractor” includes any officer or employee of the subcontractor with access to or who uses FTI or state tax information.
23. The contractor’s confidentiality obligations under this section shall survive the termination of this contract.
24. IDR will have the right to void the contract if the contractor fails to meet the terms of FTI or state tax information safeguards described herein.

### III. Criminal/Civil Sanctions

1. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
2. Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
3. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection, or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
4. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of

his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

5. Each officer or employee of a contractor to whom state tax information is or may be disclosed shall be notified in writing that state tax information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, that further disclosure of any state tax information for a purpose not authorized herein, and that access/inspection of state tax information without an official need-to-know for a purpose not authorized herein constitutes a serious misdemeanor punishable upon conviction by a fine of as much as \$2,560 or imprisonment for as long as one year, or both, together with the costs of prosecution.
  6. Granting a contractor access to FTI and state tax information must be preceded by certifying that each officer or employee understands IDR's security policy and procedures for safeguarding FTI and state tax information. A contractor and each officer or employee must maintain their authorization to access FTI and state tax information through annual recertification of their understanding of IDR's security policy and procedures for safeguarding FTI and state tax information. The initial certification and recertifications must be documented and placed in IDR's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431, as well as Iowa Code sections 422.20 and 422.72. The training on IDR's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. The contractor may utilize IDR's security training. If the contractor has their own security training in lieu of IDR's security training, the contractor must receive written approval from IDR that the training meets IDR and IRS standards. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.
- IV. Inspection. The IRS and IDR, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI or state tax information under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' and IDR's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI or state tax information. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI or state tax information safeguard requirements.

## SECTION 8

### Iowa Department of Human Services Business Associate Agreement

THIS Business Associate Agreement (“BAA”) supplements and is made a part of the Contract (hereinafter, the “Underlying Agreement”) between the Iowa Department of Human Services (the “Agency”) and the Contractor (the “Business Associate”).

#### 1. Purpose.

The Business Associate performs certain services on behalf of or for the Agency pursuant to the Underlying Agreement that may include the exchange of information that is protected by the Health Insurance Portability and Accountability Act of 1996, as amended, and the HIPAA Rules (collectively “HIPAA”). The parties to the Underlying Agreement are entering into this BAA to establish the responsibilities of both parties regarding Protected Health Information and to bring the Underlying Agreement into compliance with HIPAA.

#### 2. Definitions.

The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, , Designated Record Set, Disclose, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. Business Associate. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 C.F.R. § 160.103, and in reference to the party to this BAA, shall mean the Contractor.
- b. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this BAA shall mean the portions of the Agency, which is a “hybrid” entity under HIPAA, that fall under the purview of HIPAA.
- c. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

#### 3. Obligations and Activities of Business Associate.

The Business Associate agrees to:

- a. Not Use or Disclose Protected Health Information other than as permitted or required by this BAA or as Required By Law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this BAA;
- c. Report to the Covered Entity any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware in accordance with subsection 7, below;
- d. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- e. Make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy the Covered Entity’s obligations under 45 C.F.R. §164.524;

- f. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. §164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 C.F.R. § 164.526;
  - g. Maintain and promptly make available, as directed by the Covered Entity, the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy the Cover Entity's obligations under 45 C.F.R. § 164.528;
  - h. Immediately (i.e., within 72 hours) forward any request that the Business Associate receives directly from an Individual who (1) seeks access to Protected Health Information held by the Business Associate pursuant to this BAA, (2) requests amendment of Protected Health Information held by the Business Associate pursuant to this BAA, or (3) requests an accounting of Disclosures, so that the Covered Entity can coordinate the response;
  - i. To the extent the Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
  - j. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
4. Permitted Uses and Disclosures by the Business Associate.
- a. The Business Associate may Use or Disclose Protected Health Information received in relation to the Underlying Agreement as necessary to perform the services set forth in the Underlying Agreement.
  - b. The Business Associate is not authorized to de-identify Protected Health Information in accordance with 45 C.F.R. § 164.514(a)-(c) unless expressly authorized to do so in writing by the Covered Entity's Security and Privacy Officer.
  - c. The Business Associate agrees to make Uses and Disclosures and Requests for Protected Health Information consistent with the Covered Entity's Minimum Necessary policies and procedures.
  - d. The Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity.
  - e. The Business Associate may Use or Disclose the Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to who the information is Disclosed that the information will remain confidential and used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been Breached.
5. Obligations of the Covered Entity.
- a. The Covered Entity will notify the Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect the Business Associate's Use or Disclosure of Protected Health Information.
  - b. The Covered Entity will notify the Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect the Business Associate's Use or Disclosure of Protected Health Information.
  - c. The Covered Entity shall notify the Business Associate of any restriction on the Use or Disclosure of Protected Health Information that the Covered Entity has agreed to or is

required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect the Business Associate's Use or Disclosure of Protected Health Information.

**6. Permissible Requests by the Covered Entity.**

The Covered Entity shall not request the Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity.

**7. Breach Notification Obligations of the Business Associate.**

In the event that the Business Associate discovers a Breach of Unsecured Protected Health Information, the Business Associate agrees to take the following measures immediately (i.e., within 72 hours) after the Business Associate first discovers the incident:

- a. To notify the Covered Entity of any Breach. Such notice by the Business Associate shall be provided without unreasonable delay, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of this BAA, the Business Associate is deemed to have discovered the Breach as of the first day on which such Breach is known to the Business Associate or by exercising reasonable diligence, would have been known to the Business Associate, including any person, other than the Individual committing the Breach, that is a workforce member or agent of the Business Associate;
- b. To include to the extent possible the identification of the Individuals whose Unsecured Protected Health Information has been, or is reasonably believed to have been, the subject of a Breach;
- c. To complete and submit the DHS Incident Report form located on the Agency's website at <https://dhs.iowa.gov/hipaa/baa>; and
- d. To draft a letter for the Covered Entity to utilize to notify the Individuals that their Unsecured Protected Health Information has been, or is reasonably believed to have been, the subject of a Breach. The draft letter must include, to the extent possible:
  - i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - ii. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as full name, Social Security Number, date of birth, home address, account number, disability code, or other types of information that were involved);
  - iii. Any steps the Individuals should take to protect themselves from potential harm resulting from the Breach;
  - iv. A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate harm, and to protect against any further Breaches; and
  - v. Contact procedures for Individuals to ask questions or learn additional information, which shall include Covered Entity contact information, including a toll-free telephone number, an e-mail address, web site, or postal address.

**8. BAA Administration.**

- a. Term and Termination. This BAA is effective on the date of its incorporation into the Underlying Agreement. The Covered Entity may terminate this BAA for cause if the Covered Entity determines that the Business Associate or any of its Subcontractors or agents has breached a material term of this BAA. The Covered Entity will provide written notice to the

Business Associate requesting that the Business Associate remedy the breach within the time frame provided in the notice. The remedy time frame provided the Business Associate will be consistent with the severity of the breach. The Covered Entity reserves the right to terminate the BAA without notice in the event that the Covered Entity determines, in its sole discretion, that notice is either infeasible or inappropriate under the circumstances. Expiration or termination of either the Underlying Agreement or this BAA shall constitute expiration or termination of the corresponding agreement.

- b. **Obligation to Return PHI, Destroy PHI, or Extend Protections to Retained PHI.** Upon expiration or termination of this BAA for any reason, the Business Associate shall return to the Covered Entity or destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by the Business Associate on behalf of the Covered Entity, that the Business Associate still maintains in any form. Return or destruction of Protected Health Information shall take place in accordance with the requirements for such return or destruction as set forth in the Underlying Agreement or as otherwise directed by the Covered Entity. The Business Associate shall retain no copies of the Protected Health Information unless such return or destruction is not feasible. If return or destruction of the Protected Health Information is not feasible, upon expiration or termination of this BAA, the Business Associate shall:
  - i. Retain only that Protected Health Information that is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities to the extent Required By Law;
  - ii. Return to the Covered Entity or destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
  - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as the Business Associate retains the Protected Health Information;
  - iv. Not Use or Disclose the Protected Health Information retained by the Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out in subsection 4(e) above under "Permitted Uses and Disclosures by the Business Associate" which applied prior to termination; and
  - v. Return to the Covered Entity or destroy the Protected Health Information retained by the Business Associate when it is no longer needed by the Business Associate for its proper management and administration or to carry out its legal responsibilities.
- c. **Compliance with Confidentiality Laws.** The Business Associate acknowledges that it must comply with all applicable laws that may protect the Protected Health Information or other patient information received and will comply with all such laws, which include but are not limited to the following:
  - i. Medicaid applicants and recipients: 42 U.S.C. § 1396a(a)(7); 42 C.F.R. §§ 431.300 - .307; Iowa Code § 217.30;
  - ii. Mental health treatment: Iowa Code chapters 228, 229;
  - iii. HIV/AIDS diagnosis and treatment: Iowa Code § 141A.9; and
  - iv. Substance abuse treatment: 42 U.S.C. § 290dd-2; 42 C.F.R. part 2; Iowa Code §§ 125.37, 125.93.
  - v. Consumer personal information: Iowa Code ch. 715C.
- ci **Financial Obligations for Breach Notification.**

- i. To the extent that the Business Associate is a governmental agency subject to the provisions of Iowa Code § 679A.19, any dispute between the Contractor and the Agency, including but not limited to the incursion of any costs, liabilities, damages, or penalties related to the Business Associate's breach of this BAA, shall be submitted to a board of arbitration in accordance with Iowa Code § 679A.19.
    - ii. To the extent that the Business Associate is not subject to the provisions of Iowa Code § 679A.19, the Business Associate shall defend, indemnify, and hold harmless the Covered Entity from costs, liabilities, damages, or penalties incurred as a result of the Business Associate or any Subcontractor's breach of this BAA, the Underlying Agreement, or conduct of the Business Associate or the Business Associate's Subcontractor that is not in compliance with 45 C.F.R. Part 164, subpart E. Such liability shall not attach to disclosures made at the express written direction of the Covered Entity.
    - iii. The Business Associate's obligations under this subsection 8(d) are not limited to third-party claims but shall also apply to claims by the Covered Entity against the Business Associate.
  - cii. Amendment. The Covered Entity may amend the BAA from time to time by posting an updated version of the BAA on the Agency's website at: <https://dhs.iowa.gov/hipaa/baa>, and providing the Business Associate electronic notice of the amended BAA. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the Covered Entity of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days of the Covered Entity's notice referenced herein. Any agreed alteration of the then current Covered Entity BAA shall have no force or effect until the agreed alteration is reduced to a Contract amendment and signed by the Contractor, Agency Director, and the Agency Security and Privacy Officer.
- f. Survival. All obligations of the Agency and the Business Associate incurred or existing under this BAA as of the date of expiration or termination will survive the expiration or termination of this BAA.
- g. No Third-Party Beneficiaries. There are no third-party beneficiaries to this BAA between the parties. The Underlying Agreement and this BAA are intended to only benefit the parties to the BAA.
- h. Miscellaneous.
  - i. Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as it may be amended from time to time.
  - ii. Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.
  - iii. Applicable Law. Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the same internal laws as that of the Underlying Agreement.