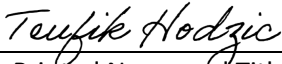


**Iowa Department of Administrative Services
Contracts Declaration & Execution Page**

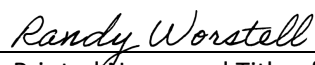
Title of Contract: HVAC Dust Cleaning Services	Bid Number RFB0921005028	Contract Number MA21265
This Agreement is entered into between the State of Iowa (by and through its agency, the Department of Administrative Services) and the Contractor named below:		
State Agency's Name: Iowa Department of Administrative Services		
Contractor's Name: Clear Air Enviro-Services		
Contract to Begin: 2/22/2021	Date of Expiration: 1/31/2022	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 – Specifications.....Page 2 Section 2 – Scope ofPage 3 Section 3 – Pricing.....Page 9 Section 4 – Terms and Conditions.....Page 6 Section 5 – Federal Compliance Policies for Grants and Cooperative Agreements.....Page 37		

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

Contractor: Clear Air Enviro-Services

By (Authorized Signature) 	Date Signed 03-05-2021
Printed Name and Title of Person Signing Teufik Hodzic, Sales Representative	
Address 1693 NE 54th Ave, Suite G. Des Moines, Iowa 50313	

State of Iowa: Department of Administrative Services – Central Procurement

By (Authorized Signature) 	Date Signed 03/05/2021
Printed Name and Title of Person Signing Randy Worstell, Purchasing Agent 3	
Address Hoover Bldg., Level – 3, 1305 E. Walnut St., Des Moines, IA 50319	

SECTION 1

Specifications

All items listed in this Section are Contract Specifications. Contractor must be able to satisfy all these specifications.

1.1 General Specifications

- 1.1.1** The provided services must provide for appropriate tree trimming, hauling, grinding, disposing, and other related services.
- 1.1.2** The provided services must provide appropriate reporting to be in compliance with applicable local and state regulations.
- 1.1.3** The provided services must follow all safety guidelines and requirements.

1.2 Contractor Specifications

- 1.2.1** Contractor must have proven experience providing tree services to public agencies that are similar in size and scope of this RFB.
- 1.2.2** Contractor must have a demonstrated working knowledge and specific experience related to all compliance requirements for tree services.
- 1.2.3** Contractor must have adequate resources to ensure all reporting requirements are operational and compliant.
- 1.2.4** Contractor must demonstrate that they have the necessary equipment or can obtain such equipment to complete tree services.
- 1.2.5** Contractor must obtain and complete all necessary forms, permits and licenses needed to conduct the work required under the terms of this contract at their expense.
- 1.2.6** Contractor must obtain all necessary lane closure, property owner access and other needed authorization to conduct tree maintenance operations on right-of-way, easements or state-owned property.
- 1.2.7** Contractor must demonstrate that they have the necessary experience in the operation of such equipment required above.
- 1.2.8** Contractor must be able to complete 100% of work requirements. No subcontracting of services will be allowed.

SECTION 2

Scope of Work

During the term of this Contract, the Contractor will provide the requested services pursuant to individual Task Orders. Once executed by the State and Contractor, each Task Order is binding on the parties thereto. The Contractor will work in good faith with the State to develop and agree to the contents of each Task Order. Task Orders, by reference, shall contain and be subject to the terms and conditions of this Contract. The expected services and related deliverables necessary to carry out the purpose of the Contract may include, but are not limited to, the following:

2.1 General

The State recognizes the need and value of having HVAC Duct systems cleaned to improve air quality, eliminate odors and help extend working life of equipment. The extent of ductwork to be cleaned shall be determined by review of available construction documents and field verification.

2.2 Scope

The intent of this contract is to obtain services from a qualified Contractor for the cleaning of facility HVAC duct systems across the State of Iowa facilities and local political subdivisions. The HVAC system includes any interior surface of the facility's air distribution system for conditioned spaces and/or occupied zones. This includes all Heating, Ventilating and Air Conditioning systems from the points where the air enters the system to the points where the air is discharged from the system. The return air grilles, return air ducts to the air handling unit (AHU), interior surfaces of the AHU, mixing box, coil compartment, condensate drain pans, supply air ducts, fans, fan housing, fan blades, turning vanes, filters, filter housings, reheat coils, and supply diffusers are all considered part of the HVAC system. The HVAC system may also include other components such as dedicated exhaust and ventilation components and make-up air systems. The Kitchen Hood Exhaust systems are not included in the scope of work.

2.2.1 It shall be the Contractor's responsibility, and anyone employed by the Contractor, to adhere to and comply with all federal, state and local laws, regulations, and codes as well as with all standards and practices relating to the work being performed or the service provided. In addition, it will be the Contractor's responsibility, and anyone employed by the Contractor, to procure and keep in effect any and all licenses, permits, notifications or other regulatory requirements relating the work to be performed or the service to be provided.

2.2.2 Contractor's services shall include all labor, materials, tools, equipment and other items necessary for cleaning HVAC duct systems.

2.2.3 The HVAC system includes any interior surface of the facility's air distribution system for conditioned spaces and/or occupied zones. This includes all Heating, Ventilating and Air Conditioning systems from the points where the air enters the system to the points where the air is discharged from the system. The return air grilles, return air ducts to the air handling unit (AHU), interior surfaces of the AHU, mixing box, coil compartment, condensate drain pans, supply air ducts, fans, fan housing, fan blades, turning vanes, filters, filter housings, reheat coils, and supply diffusers are all considered part of the HVAC system. The HVAC system may also include other components such as dedicated exhaust and ventilation components and make-up air systems. The Kitchen Hood Exhaust systems are not included in the scope of work.

2.3 SYSTEM CLEANING REQUIREMENTS

2.3.1 Containment

Debris removed during cleaning shall be collected and precautions must be taken to ensure that Debris is not otherwise dispersed outside the HVAC system during the cleaning process.

2.3.2 Particulate Collection

Where the Particulate Collection Equipment is exhausting inside the building, HEPA filtration with 99.97% collection efficiency for 0.3-micron size (or greater) particles shall be used. When the Particulate Collection Equipment is exhausting outside the building, Mechanical Cleaning operations shall be undertaken only with Particulate Collection Equipment in place, including adequate filtration to contain Debris removed from the HVAC system. When the Particulate Collection Equipment is exhausting outside the building, precautions shall be taken to locate the equipment down wind and away from all air intakes and other points of entry into the building.

2.3.3 Controlling Odors

Measures shall be employed to control odors and/or mist vapors during the cleaning process.

2.3.4 Component Cleaning

Cleaning methods shall be employed such that all HVAC system components must be Visibly Clean as defined in applicable industry standards. Upon completion, all components must be returned to those settings recorded just prior to cleaning operations.

2.3.5 Air-Volume Control Devices

Dampers and any air-directional mechanical devices inside the HVAC system must have their position marked prior to cleaning and, upon completion, must be restored to their marked position.

2.3.6 Service Openings

The contractor shall utilize service openings, as required for proper cleaning, at various points of the HVAC system for physical and mechanical entry, and inspection.

- Contractor shall utilize the existing service openings already installed in the HVAC system where possible.
- Other openings shall be created where needed and they must be created so they can be sealed in accordance with industry codes and standards.
- Closures must not significantly hinder, restrict, or alter the airflow within the system.
- Closures must be properly insulated to prevent heat loss/gain or condensation on surfaces within the system.
- Openings must not compromise the structural integrity of the system.
- Construction techniques used in the creation of openings should conform to requirements of applicable building and fire codes, and applicable NFPA, SMACNA and industry standards.

- Cutting service openings into flexible duct is not permitted. Flexible duct shall be disconnected at the ends as needed for proper cleaning and inspection.
- All service openings capable of being re-opened for future inspection or remediation shall be clearly marked and shall have their location reported to the owner in project report documents.

2.3.7 Ceiling Tile

The contractor may remove and reinstall ceiling sections to gain access to HVAC systems during the cleaning process.

2.3.8 Air Distribution Devices (registers, grilles & diffusers)

The contractor shall clean all air distribution devices.

2.3.9 Air Handling Units, Blowers and Exhaust Fans

The contractor shall insure that supply, return, and exhaust fans and blowers are thoroughly cleaned. Areas to be cleaned include blowers, fan housings, plenums (except ceiling supply and return plenums), scrolls, blades, or vanes, shafts, baffles, dampers and drive assemblies. All visible surface contamination deposits shall be removed in accordance with industry Standards. Contractor shall:

- Clean all air handling units (AHU) internal surfaces, components and condensate collectors and drains.
- Assure that a suitable operative drainage system is in place prior to beginning wash down procedures.
- Clean all coils and related components, including evaporator fins.

2.3.10 Duct Systems

- Contractor shall create service openings in the system as necessary in order to accommodate cleaning of otherwise inaccessible areas.
- Contractor shall mechanically clean all duct systems to remove all visible contaminants, such that the systems are capable of passing Cleaning Verification Tests (see NADCA Standards).

2.4 HEALTH AND SAFETY

2.4.1 Safety Standards

Cleaning contractors shall comply with applicable federal, state, and local requirements for protecting the safety of the contractor's employees, building occupants, and the environment. In particular, all applicable standards of the Occupational Safety and Health Administration (OSHA) shall be followed when working in accordance with this specification.

2.4.2 Occupant Safety

No processes or materials shall be employed in such a manner that they will introduce additional hazards into occupied spaces.

2.4.3 Disposal of Debris

All Debris removed from the HVAC System shall be disposed of in accordance with applicable federal, state and local requirements.

2.5 MECHANICAL CLEANING METHODOLOGY

2.5.1 Source Removal Cleaning Methods

The HVAC system shall be cleaned using Source Removal mechanical cleaning methods designed to extract contaminants from within the HVAC system and safely remove contaminants from the facility. It is the contractor's responsibility to select Source Removal methods that will render the HVAC system Visibly Clean and capable of passing cleaning verification methods (See applicable Industry Standards) and other specified tests, in accordance with all general requirements. No cleaning method, or combination of methods, shall be used which could potentially damage components of the HVAC system or negatively alter the integrity of the system.

- All methods used shall incorporate the use of vacuum collection devices that are operated continuously during cleaning. A vacuum device shall be connected to the downstream end of the section being cleaned through a predetermined opening. The vacuum collection device must be of sufficient power to render all areas being cleaned under negative pressure, such that containment of debris and the protection of the indoor environment are assured.
- All vacuum devices exhausting air inside the building shall be equipped with HEPA filters (minimum efficiency), including hand-held vacuums and wet- vacuums.
- All vacuum devices exhausting air outside the facility shall be equipped with Particulate Collection including adequate filtration to contain Debris removed from the HVAC system. Such devices shall exhaust in a manner that will not allow contaminants to re-enter the facility. Release of debris outdoors must not violate any outdoor environmental standards, codes or regulations.
- All methods require mechanical agitation devices to dislodge debris adhered to interior HVAC system surfaces, such that debris may be safely conveyed to vacuum collection devices. Acceptable methods will include those, which will not potentially damage the integrity of the ductwork, nor damage porous surface materials such as liners inside the ductwork or system components.

2.5.2 Cleaning of Coils

Any cleaning method may be used which will render the Coil Visibly Clean and capable of passing Coil Cleaning Verification (see applicable Industry Standards). Coil drain pans shall be subject to Non-Porous Surfaces Cleaning Verification. The drain for the condensate drain pan shall be operational. Cleaning methods shall not cause any appreciable damage to, displacement of, inhibit heat transfer, or erosion of the coil surface or fins, and shall conform to coil manufacturer recommendations when available. Coils shall be thoroughly rinsed with clean water to remove any latent residues.

2.5.3 Antimicrobial Agents and Coatings

- Antimicrobial agents shall only be applied if active fungal growth is reasonably suspected, or where unacceptable levels of fungal contamination have been verified through testing.
- Application of any antimicrobial agents used to control the growth of fungal or bacteriological contaminants shall be performed after the removal of surface deposits and debris.
- When used, antimicrobial treatments and coatings shall be applied in strict accordance with the manufacturer's written recommendations and EPA registration listing.
- Antimicrobial coatings shall be applied according to the manufacturer's written instructions. Coatings shall be sprayed directly onto interior ductwork surfaces, rather than "fogged" downstream onto surfaces.

2.6 CLEANLINESS VERIFICATION

2.6.1 General

Verification of HVAC System cleanliness will be determined after mechanical cleaning and before the application of any treatment or introduction of any treatment-related substance to the HVAC system, including antimicrobial agents and coatings.

2.6.2 Visual Inspection

The HVAC system shall be inspected visually to ensure that no visible contaminants are present.

- If no contaminants are evident through visual inspection, the HVAC system shall be considered clean; however, the owner reserves the right to further verify system cleanliness through Surface Comparison Testing or the NADCA vacuum test specified in the NADCA standards.
- If visible contaminants are evident through visual inspection, those portions of the system where contaminants are visible shall be re-cleaned and subjected to re-inspection for cleanliness.
- NADCA vacuum test analysis should be performed by a qualified third party experienced in testing of this nature.

2.6.3 Verification of Coil Cleaning

Cleaning must restore the coil pressure drop to within 10 percent of the pressure drop measured when the coil was first installed. If the original pressure drop is not known, the coil will be considered clean only if the coil is free of foreign matter and chemical residue, based on a thorough visual inspection (see NADCA Standards).

2.7 PRE-EXISTING SYSTEM DAMAGE

Contractor is not responsible for problems resulting from prior inappropriate or careless cleaning techniques of others.

SECTION 3 Pricing

3.1 Fixed Fee Services

Air Handling Unit	Hourly Rate		
Accessibility Complexity Factor	Easy	Moderate	Difficult
Buildup of Air Handler, Packaged Air Handler (inside), Rooftop Air Handler, Other Air Handling Component	\$68.50	\$85.63	\$98.50
Duct Work Cleaning	Price per Linear Foot		
Complexity Factor	Easy	Moderate	Difficult
Lined - Supply Ducts, Return Ducts, Exhaust Ducts, Fresh Air Ducts, Flex Ducts, Risers	\$4.25	\$7.25	\$10.25
Unlined - Supply Ducts, Return Ducts, Exhaust Ducts, Fresh Air Ducts, Flex Ducts, Risers	\$3.50	\$6.50	\$9.50
Fiber Board	\$3.50	\$6.50	\$10.50
Cleaning of System Components	Hourly Rate		
Diffuser, Inline Coil, Mixing Box, VAV Units	\$68.50		
Cooling Tower	\$89.50		
Sanitizing	Hourly Rate		
Duct Work	\$78.50		
or per Linear foot	\$5.50		
System Component	\$68.50		
Equipment Rental	Percent of Mark-Up		
Scissor Lift, Scaffolding, Scissor Lift	10%		
Material/Chemicals	Percent of Mark-Up		
Cleaning	10%		
Coatings	15%		
Disposal Fees			
Dump Fees (Per 100 lbs.)	\$25.00		

3.2 Performance Measures

- 3.2.1** Contractor will provide schedule date for service to the contact indicated on the Task Order within three (3) business days upon receipt of approved Task Order.
- Amount at risk – 5% of daily fee for late scheduling

SECTION 4

Terms and Conditions

4.1 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 RFB.

“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 Declarations & Execution Page(s).

“Contract Declarations & Execution Page(s)” means the document that contains basic information about the Contract and incorporates by reference these General Terms for Services Contracts, the Special Terms, and all other attachments to the Contract Declarations and Executions Page(s).

“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) identified on the Contracts Declarations and Execution Page(s) that was issued to solicit the Deliverables that are subject to the Contract.

“Special Contract Attachments” means any attachment to this Contract indicated on the Contract Declarations & Execution Page(s).

“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.

4.2 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.

4.3 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.

4.4 Scope of Work

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

4.5 Compensation

4.5.1 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, on the frequency established on the Contract Declarations & Execution Page(s) 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.

4.5.2 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.

4.5.3 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:

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

4.5.3.2 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.

4.5.4 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:

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

4.5.4.2 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.

4.6 Termination

4.6.1 Immediate Termination by the State

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

- 4.6.1.1** 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;
- 4.6.1.2** 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;
- 4.6.1.3** The Contractor fails to comply with confidentiality laws or provisions;
- 4.6.1.4** 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.

4.6.2 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:

- 4.6.2.1** 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;
- 4.6.2.2** 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;
- 4.6.2.3** Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;

- 4.6.2.4** Contractor terminates or suspends its business;
- 4.6.2.5** 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;
- 4.6.2.6** 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;
- 4.6.2.7** 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;
- 4.6.2.8** 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;
- 4.6.2.9** Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- 4.6.2.10** 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:
 - 4.6.2.10.1** 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;

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

4.6.2.10.3 Making an assignment for the benefit of creditors;

4.6.2.10.4 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

4.6.2.10.5 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.

4.6.3 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.

4.6.4 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:

4.6.4.1 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

4.6.4.2 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

4.6.4.3 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

4.6.4.4 If the Agency's duties, programs or responsibilities are modified or materially altered; or

4.6.4.5 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.

4.6.5 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:

4.6.5.1 The payment of unemployment compensation to Contractor's employees;

4.6.5.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

4.6.5.3 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;

4.6.5.4 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;

4.6.5.5 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.

4.6.6 Contractor's Termination Duties

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

4.6.6.1 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.

4.6.6.2 Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.

4.6.6.3 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.

4.6.6.4 Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor.

4.6.6.5 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.

4.6.7 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.

4.7 Confidential Information

4.7.1 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.

4.7.2 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.

4.7.3 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.

4.7.4 Reporting of Unauthorized Disclosure

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

4.7.5 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.

4.7.6 Survives Termination

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

4.8 Indemnification

4.8.1 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:

- 4.8.1.1** Any breach of this Contract;
- 4.8.1.2** Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- 4.8.1.3** The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;
- 4.8.1.4** 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;
- 4.8.1.5** 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.

4.8.2 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.

4.9 Insurance

4.9.1 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.

4.9.2 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	\$1 Million
	Each Occurrence	\$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

4.9.3 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.

4.9.4 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.

4.10 Project Management & Reporting

4.10.1 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.

4.10.2 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.

4.10.3 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:

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

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

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

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

4.10.4 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.

4.10.5 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:

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

4.10.5.2 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.

4.10.5.3 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.

4.10.5.4 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.

4.11 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.

4.12 Intellectual Property

4.12.1 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.

4.12.2 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.

4.12.3 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.

4.13 Warranties

4.13.1 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.

4.13.2 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.

4.13.3 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 of 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.

4.13.4 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.

4.13.5 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.

4.13.6 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.

4.13.7 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.

4.14 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:

- 4.14.1** Require Contractor to correct and repair such Deliverable within such period of time as the Agency may specify in a written notice to Contractor;
- 4.14.2** 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);
- 4.14.3** 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
- 4.14.4** 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).

4.15 Contract Administration

4.15.1 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).

4.15.2 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.

4.15.3 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.

4.15.4 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.

4.15.5 Procurement

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

4.15.6 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.

4.15.7 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.

4.15.8 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.

4.15.9 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.

4.15.10 Third Party Beneficiaries

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

4.15.11 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.

4.15.12 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.

4.15.13 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.

4.15.14 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.

4.15.15 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.

4.15.16 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 here from. 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.

4.15.17 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.

4.15.18 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.

4.15.19 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.

4.15.20 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:

4.15.20.1 At the time it is actually received; or,

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

4.15.20.3 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.

4.15.21 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.

4.15.22 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.

4.15.23 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.

4.15.24 Authorization

Contractor represents and warrants that:

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

4.15.24.2 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.

4.15.25 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.

4.15.26 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.

4.15.26.1 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.

4.15.26.2 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.

4.15.26.3 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.

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

4.15.26.5 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.

4.15.27 Audits or Examination of Records

4.15.27.1 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.

4.15.27.2 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.

4.15.27.3 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.

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

4.15.28 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.

4.15.29 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.

4.15.30 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.

4.15.31 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.

4.15.32 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.

4.15.33 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.

4.15.34 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.

4.15.35 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.

4.15.36 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.

4.15.37 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.

4.15.38 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.

4.15.39 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.

4.15.40 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.

4.15.41 Public Records

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

4.15.42 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.

4.15.43 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.

4.15.44 No Minimums Guaranteed

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

SECTION 5
Iowa Homeland Security and Emergency Management Department
FEDERAL COMPLIANCE POLICIES FOR GRANTS AND COOPERATIVE AGREEMENTS

UNIFORM ADMINISTRATIVE REQUIREMENTS

TITLE 2 CFR, CHAPTER II, OMB GUIDANCE PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

All non-Federal entities must adhere to federal legislation passed by Congress as well as codified regulations implemented through administrative requirements. The following language must be included in any non-Federal entities' agreement articles, contracts, MOUs, and LOAs.

5.1 ACKNOWLEDGEMENTS AND ASSURANCES

- 5.1.1** Non-Federal entities are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at 2 CFR. Part 200.
- 5.1.2** All Non-Federal entities using federal financial assistance must acknowledge and agree and require any non-Federal entities including contractors, successors, transferees, and assignees to acknowledge and agree to comply with applicable provisions governing access to records, accounts, documents, information, facilities, and staff.
- 5.1.3** Non-Federal entities must cooperate with any compliance review or complaint investigation conducted by federal agency.
- 5.1.4** Non-Federal entities must give federal agencies access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by federal agencies' regulations and other applicable laws or program guidance. Non-Federal entities must submit timely, complete, and accurate reports to the appropriate federal agencies' officials and maintain appropriate backup documentation to support the reports.
- 5.1.5** Non-Federal entities must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
- 5.1.6** If, during the past three years, the non-Federal entities have been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the non-Federal entities must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the federal agency awarding office and the Federal Office of Civil Rights and Civil Liberties.
- 5.1.7** In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the non-Federal entity, or the Non-Federal

entity settles a case or matter alleging such discrimination, the non-Federal entity must forward a copy of the complaint and findings to the federal agencies' component and/or awarding office. The United States has the right to seek judicial enforcement of these obligations.

5.2 ACKNOWLEDGEMENT OF FEDERAL FUNDING FROM FEDERAL AGENCIES

All non-Federal entities using Federal financial assistance will comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

5.3 ACTIVITIES CONDUCTED ABROAD

All non-Federal entities using financial assistance will comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

5.4 AGE DISCRIMINATION ACT OF 1975

All non-Federal entities using financial assistance will comply with the requirements of the Age Discrimination Act of 1975 (42 USC. § 6101et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

5.5 AMERICANS WITH DISABILITIES ACT OF 1990

All non-Federal entities using federal financial assistance will comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits non-Federal entities from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC. §§ 12101-12213).

5.6 ANIMAL WELFARE ACT OF 1966

All non-Federal entities using federal financial assistance will comply with the requirements of the Animal Welfare Act, as amended (7 USC. § 2131 et seq.), which requires that minimum standards of care and treatment be provided for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. Non-Federal entities s must establish appropriate policies and procedures for the humane care and use of animals based on the Guide for the Care and Use of Laboratory Animals and comply with the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals.

5.7 BEST PRACTICES FOR COLLECTION AND USE OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

Federal agencies define personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All non-Federal entities s who collect PII are required to have a publically available privacy policy that describes standards on the usage and maintenance of PII they collect. Non-Federal entities may also find as a useful resource the Privacy Impact Assessments: Privacy Guidance and Privacy template respectively.

5.8 BYRD ANTI-LOBBYING AMENDMENT (31 USC. 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 USC. 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.

5.9 CLEAN AIR ACT OF 1970, CLEAN WATER ACT OF 1977, FEDERAL WATER POLLUTION CONTROL ACT

5.9.1 Clean Air Act (42 USC. 7401-7671q.) and the Federal Water Pollution Control Act (33 USC. 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 USC. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

5.9.2 All non-Federal entities using federal financial assistance will comply with the requirements of 42 USC. § 7401 et seq. and Executive Order 11738, which provides for the protection and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters is considered research for other purposes.

5.10 COASTAL WETLANDS PLANNING, PROTECTION, AND RESTORATION ACT OF 1990

All non-Federal entities using federal financial assistance will comply with the requirements of Executive Order 11990, which provides that federally funded construction and improvements minimize the destruction, loss, or degradation of wetlands. The Executive Order provides that, in furtherance of Section 101(b) (3) of NEPA (42 USC. § 4331(b) (3)), Federal and non-federal agencies, to the extent permitted by law, must avoid undertaking or assisting with new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. The public disclosure requirement described above also pertains to early public review of any plans or proposals for new construction in wetlands. This is codified at 44 CFR Part 9.

5.11 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 USC. 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 USC. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC. 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 USC. 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.

5.12 CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. See §200.326 Contract provisions

5.12.1 Contracts for more than the simplified acquisition threshold set at \$150,000.

- All Non-Federal entities s who have contracts exceeding the acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council as authorized by [41 USC. §1908](#), must address administrative, contractual, or legal remedies in instance where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

5.12.2 Contracts in excess of \$10,000.

- All Non-Federal entities s that have contracts exceeding \$10,000 must address termination for cause and for convenience by the non- Federal entity including the manner by which it will be effected and the basis for settlement.

5.13 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS §200.321

The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of section Title 2: Grants and Agreements Part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards Subpart D—Post Federal Award Requirements.

5.14 CONTRACT COST AND PRICE §200.323

The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract

modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

5.15 CONTRACT PROVISIONS §200.326

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

5.16 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.

5.17 COPYRIGHT

All non-Federal entities using federal financial assistance will comply with requirements that publications or other exercise of copyright for any work first produced under federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this award, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the non-Federal entities grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The non-Federal entities shall affix the applicable copyright notices of 17 USC. § 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under an award.

5.18 DAVIS-BACON ACT

Non-Federal entities, as applicable, with the provisions of the Davis-Bacon Act (40 USC. §§ 276a to 276a-7), the Copeland Act (40 USC. § 276c and 18 USC. § 874), and the Contract Work Hours and Safety Standards Act (40 USC. §§ 327 - 333) regarding labor standards for federally-assisted construction sub agreements.

The Davis-Bacon and Related Acts, apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act, as amended (40 USC. 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 USC. 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. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 USC. 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 contractors or subcontractor 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

5.19 DEBARMENT AND SUSPENSION EXECUTIVE ORDERS 12549 AND 12689

All non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities. These are discretionary actions that agencies implement to protect the federal government by excluding contractors who commit fraud, behave unethically, or willfully fail to perform or have a history of failure to perform according to the terms of a contract from conducting business with the federal government. Prior performance on a state contract may cause a vendor to be disqualified or prevent the vendor from being considered a qualified bidder. 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.

5.20 FEDERAL AGENCIES SEAL, LOGO AND FLAGS

All non-Federal entities using federal financial assistance must obtain federal approval prior to using the federal agencies' seal(s), logos, crests or reproductions of flags or likenesses of federal agencies, agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

5.21 DRUG-FREE WORKPLACE REGULATIONS

All non-Federal entities using federal financial assistance will comply with the requirements of the Drug-Free Workplace Act of 1988 (41 USC. § 701 et seq.), which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. The Non-Federal entity must notify the awarding office if an employee of the non-Federal entity is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. These regulations are codified at 2 CFR 3001.

5.22 DUPLICATION OF BENEFITS

Any cost allocable to a particular Federal award provided for in 2 CFR Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude a Non-Federal entities from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal award.

5.23 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."

5.24 ENERGY POLICY AND CONSERVATION ACT

All non-Federal entities must comply with the requirements of 42 USC. Â¿ 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

5.25 ENVIRONMENTAL PLANNING AND HISTORIC PRESERVATION (EHP) REQUIREMENT

Non-Federal entities proposing projects that have the potential to impact the environment, including but not limited to construction of communication towers, modification or renovation of existing buildings, structures and facilities, or new construction including replacement of facilities, must participate in the EHP review process. The EHP review process involves the submission of a detailed project description that explains the goals and objectives of the proposed project along with supporting documentation so that FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties. In some cases, FEMA is also required to consult with other regulatory agencies and the public in order to complete the review process. The EHP review process must be completed before funds are released to carry out the proposed project.

5.26 FALSE CLAIMS ACT AND PROGRAM FRAUD CIVIL REMEDIES

The False Claims Act imposes liability on persons and companies who defraud governmental programs. The law includes provision that allows people who are not affiliated with the government to file on behalf of the government (informally called whistle blowing). All Non-Federal entities must comply with the requirements of 31 USC. § 3729 which set forth that no non-Federal entities of federal payments shall submit a false claim for payment. See also 38 USC. § 3801-3812 which details the administrative remedies for false claims and statements made.

5.27 FEDERAL ACQUISITION REGULATIONS (FAR)

FAR requires non-federal agencies to solicit offers from, award contracts to, and consent to subcontracts only with responsible contractors. Suspensions and debarments are discretionary actions that agencies implement to protect the federal government by excluding contractors who commit fraud, behave unethically, or willfully fail to perform or have a history of failure to perform according to the terms of a contract from conducting business with the federal government.

5.28 FEDERAL DEBT STATUS OMB CIRCULAR A-129 AND FORM SF-424B, ITEM NUMBER 17

All non-Federal entities are required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments.

5.29 FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006

The Federal Funding Accountability and Transparency Act (FFATA) ensures that the public can access information on all entities and organizations receiving Federal funds. Central to the law was the development of www.USASpending.gov, a publically available website with searchable information on each Federal grant. Prime non-Federal entities are responsible for reporting contract information over \$25,000 and the compensation of an organization's top five executive officers when more than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually is required.

5.30 FEDERAL LEADERSHIP ON REDUCING TEXT MESSAGING WHILE DRIVING

All non-Federal entities are encouraged to adopt and enforce policies that ban text messaging while driving as described in [E.O. 13513](#), including conducting initiatives described in Section 3(a) of the Order when on official Government business or when performing any work for or on behalf of the federal government.

5.31 FLOOD DISASTER PROTECTION ACT OF 1973

All non-Federal entities of financial assistance will comply with the requirements of the Flood Disaster Protection Act of 1973, as amended (42 USC. § 4001 et seq.), which provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in identified flood-prone communities in the United States, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within one year of the identification. The flood insurance purchase requirement applies to both public and private applicants for federal support. Lists of flood prone areas that are eligible for flood insurance are published in the Federal Register by FEMA.

5.32 FLY AMERICA ACT OF 1974

All non-Federal entities of financial assistance must comply with the requirements of the preference for U.S. Flag Air Carriers. Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 USC. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

5.33 HATCH ACT

All non-Federal entities must comply with the Hatch Act (5 USC. 1501-1508 and 7324-7328) which limits the political activities of employees whose principal employment activities are funded in whole or part with federal funds (Coverage is not dependent on the source of an employee's salary, nor is it dependent upon whether the employee actually administers the funds or has policy duties with respect to them). State and local employees subject to the Hatch Act continue to be covered while on vacation leave, annual leave, sick leave, leave without pay, administrative leave, or furlough.

5.34 HOTEL AND MOTEL FIRE SAFETY ACT OF 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC. §2225(a), all non-Federal entities must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, 15 USC. §2225.

5.35 IMPROVING ACCESS TO SERVICES LIMITED ENGLISH PROFICIENCY EXECUTIVE ORDER 13166

The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. It is expected that agency plans will provide for such meaningful access consistent with, and without unduly burdening, the fundamental mission of the agency. The Executive Order also requires that the Federal agencies work to ensure that Non-Federal entities s of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

5.36 INDEMNIFICATION

5.36.1 The non-Federal entities must agree that grant funds are solely for the benefit of the parties to the grant award and gives no right to any other party. No joint venture or partnership may be formed as a result of these Grant Terms and Conditions.

5.36.2 The non-Federal entities must agree to protect, save and hold harmless HSEMD, the State of Iowa, and their authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the negligent acts, errors, or omissions of the non-Federal entities. This likewise applies to the non-Federal entities' authorized representative(s), its contractors, subcontractors, agents, licensees, or other such person associated with the non-Federal entities in connection with the Terms and Conditions of any federal grant.

5.36.3 The non-Federal entity and its sub-contractors agrees to defend HSEMD, the State of Iowa, and their authorized agents and employees against any claim or cause of action, or to pay reasonable attorney's fees incurred in the defense of any such claim or cause of action, as to which the non-Federal entities is required to protect, save or hold harmless.

5.37 LOBBYING PROHIBITIONS

None of the funds provided under an award may be expended by the non-Federal entities to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection HSEMD with any Federal action concerning the award or renewal of any Federal contract, grant, loan, cooperative agreement.

5.38 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) OF 1969

All non-Federal entities of financial assistance will comply with the requirements of the National Environmental Policy Act (NEPA), as amended, 42 USC. § 4331 et seq., which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for its grant-supported activities, federal agencies require the environmental aspects of construction grants (and certain non-construction projects as specified by the Component and awarding office) to be reviewed and evaluated before final action on the application.

5.39 NATIONAL FLOOD INSURANCE ACT OF 1968

All non-Federal entities using federal financial assistance will comply with the requirements of Section 1306(c) of the National Flood Insurance Act, as amended, which provides for benefit payments under the Standard Flood Insurance Policy for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. These regulations are codified at 44 CFR Part 63.

5.40 NON-SUPPLANTING REQUIREMENT

All non-Federal entities must ensure that Federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. Applicants or award non-Federal entities may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt of expected receipt of Federal funds.

PATENTS AND INTELLECTUAL PROPERTY RIGHTS

Unless otherwise provided by law, non-Federal entities are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 USC. Â¿ 200 et seq. All non-Federal entities are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 CFR Part 401 and the standard patent rights clause located at 37 CFR Â¿ 401.14.

5.41 PROCUREMENT STANDARDS

- 5.41.1** When procuring property and services under a grant, a non-Federal entity will follow the same policies and procedures it uses for procurements from its non-Federal funds. Non-Federal entities must ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Contracting and procurement standards must be in accordance with the written adopted procedures of non-Federal entities, as long as the procurement standards conform to applicable State and Federal law.
- 5.41.2** Non-Federal entities shall ensure that every purchase order or contract includes all clauses required by Federal statutes, executive orders, and other regulations.
- 5.41.3** Non-Federal entities shall submit bid and contracts greater than \$5,000 to HSEMD, prior to awarding or executing the contracts. HSEMD will review and comment regarding compliance with federal/state guidelines and procedures. Failure to submit for review may result in denial of request for payment if contract/procurement procedures are deemed non-compliant.

5.42 PROCUREMENT OF RECOVERED MATERIALS

All non-Federal entities must comply with Section 6002 of the *Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act*. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

5.43 PROTECTION OF HUMAN SUBJECTS

All non-Federal entities using federal financial assistance will comply with the requirements of the Federal regulations at 45 CFR Part 46, which requires that non-Federal entities comply with applicable provisions/law for the protection of human subjects for purposes of research. Non-Federal entities must also comply with the requirements in federal Management Directive 026-04, Protection of Human Subjects, prior to implementing any work with human subjects. For purposes of 45 CFR Part 46, research means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.

5.44 REHABILITATION ACT OF 1973

All non-Federal entities using federal financial assistance must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 USC. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment.

5.45 REPORTING OF MATTERS RELATED TO NON-FEDERAL ENTITIES INTEGRITY AND PERFORMANCE

If the total value of the current active grant and procurement contracts from all Federal assistance office exceeds \$10,000,000 for any period of time during the period of performance of the Federal award, the non-Federal entities must comply with the requirements set forth in the government-wide Award Term and Condition for non-Federal entities, Integrity and Performance Matters located at 2 CFR Part 200, Appendix XII, the full text of which is incorporated by reference in the terms and conditions of grant award.

5.46 REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

All non-Federal entities are required to comply with the requirements set forth in the governmentwide Award Term on Reporting Subawards and Executive Compensation located at [2 CFR Part 170, Appendix A](#), the full text of which is incorporated here by reference in the terms and conditions of the grant award.

5.47 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 non- Federal entities wish 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 Non-Federal entities 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.

5.48 SAFECOM REQUIREMENTS

Non-Federal entities which receive awards that wholly or partially provide funding for emergency communication projects and related activities must comply with the most recent version of the *SAFECOM Guidance on Emergency Communications Grants*. The guidance is intended to ensure that Federally-funded investments are compatible, interoperable, and support the national goals and objectives for improving emergency communications nationwide. Non-Federal investing in broadband related investments must review IB 386: Clarification on Use of Federal Agencies/FEMA Public Safety Grant Funds for Broadband-Related Expenditures and Investments must consult FEMA headquarters Program Analyst on such Investments before developing applications.

5.49 SINGLE AUDIT CERTIFICATION AND ASSURANCE

Non-Federal entities must comply with the 2 CFR, the "Single Audit Act, as amended," and the "Single Audit Act Amendments of 1996, as amended," Audit requirements for non-Federal entities that expend \$750,000 or more in a year in Federal awards shall have a single audit conducted. A program specific audit may be conducted in place of a single audit if the auditee meets the terms specified in 2 CFR. The Single Audit Act provides that the audit shall be made by an independent auditor and in addition to the financial audit, requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with

applicable laws and regulations. In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems.

5.50 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 LIMITED ENGLISH PROFICIENCY

All non-Federal entities using federal financial assistance will comply with the requirements of Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, Non-Federal entities s must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Non-Federal entities s are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. Non-Federal entities s of financial assistance will comply with the requirements of (42 USC. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

5.51 TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 (FAIR HOUSING)

All non-Federal entities using federal financial assistance must comply with Title VIII of the Civil Rights Act of 1968, which prohibits non-Federal entities from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 USC. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 CFR Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units-i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)-be designed and constructed with certain accessible features (see 24 CFR § 100.201).

5.52 TITLE IX OF EDUCATION AMENDMENTS OF 1972

All non-Federal entities using federal financial assistance will comply with the requirements of Title IX of the Education Amendments of 1972 (20 USC. § 1681 et seq.), which provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. These regulations are codified at 44 CFR Part 19.

5.53 TRAFFICKING VICTIMS PROTECTION ACT OF 2000

All non-Federal entities using federal financial assistance will comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 USC. § 7104), located at 2 CFR Part 175. This is implemented in accordance with OMB Interim Final Guidance, Federal Register, Volume 72, No. 218, November 13, 2007 In accordance with the statutory requirement, in each agency award under which funding is provided to a private entity, Section 106(g) of the TVPA, as amended, requires the agency to include a condition that authorizes the agency to terminate the award,

without penalty, if the Non-Federal entities or a sub Non-Federal entities - (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect; (b) Procures a commercial sex act during the period of time that the award is in effect; or (c) Uses forced labor in the performance of the award or sub awards under the award. Full text of the award term is provided at 2 CFR § 175.15.

5.54 TERRORIST FINANCING

All non-Federal entities must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Non-Federal entities to ensure compliance with the Order and laws

5.55 UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT (SAM)

All non-Federal entities are required to comply with the requirements set forth in the governmentwide Award Term regarding the System for Award Management and Universal Identifier Requirements located at 2 CFR Part 25, Appendix A.

5.56 USA PATRIOT ACT OF 2001

All non-Federal entities using federal financial assistance will comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 USC. §§ 175-175c.

5.57 WHISTLEBLOWER PROTECTION ACT

All non-Federal entities must comply with the statutory requirements for whistleblower protections (if applicable) at 10 USC Â¿ 2409, 41 USC. 4712, and 10 USC. Â¿ 2324, 41 USC. Â¿ 4304 and 4310.