

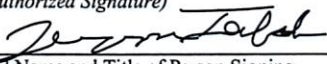
**State of Iowa Office of the Chief Information Officer**  
**Contracts Declaration & Execution Page**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                   |                                                      |                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|------------------------------------------------------|---------------------------------|
| Title of Contract:<br>Drupal Managed Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                   | RFP#1216185012                                       | Contract Number<br>2017-BUS-601 |
| This Contract is entered into between the State of Iowa (by and through its agency, the Office of the Chief Information Officer) and the Contractor named below, this Contract is open to the State of Iowa, OCIO, and all participating agencies as further determined by Iowa Code Section 8B:                                                                                                                                                                                                                                                                                       |                                   |                                                      |                                 |
| State Agency's Name:<br>Office of the Chief Information Officer                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                   |                                                      |                                 |
| Contractor's Name:<br>Webspec Design, LLC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                   |                                                      |                                 |
| Contract to Begin:<br>Date of last signature, below.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Date of Expiration:<br>06-01-2018 | Annual Extensions:<br>9 optional one year extensions |                                 |
| The parties agree to comply with the terms and conditions of the following documents listed in order of preference (should there be an inconsistency or conflict between the documents): <ul style="list-style-type: none"><li>• Services Contract and any associated schedules or attachments</li><li>• Statements of Work &amp; Delivery Orders issued under the contract agreement (As issued by State of Iowa agencies &amp; entities or by political subdivisions in the State of Iowa)</li><li>• RFP1216185012</li><li>• Contractor's bid in response to RFP1216185012</li></ul> |                                   |                                                      |                                 |

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

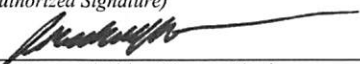
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**Contractor: Webspec Design, LLC**

|                                                                                                                  |                         |
|------------------------------------------------------------------------------------------------------------------|-------------------------|
| By (Authorized Signature)<br> | Date Signed<br>6-1-2017 |
| Printed Name and Title of Person Signing<br>Jeremiah Terhark, Owner                                              |                         |
| Address<br>5907 Meredith Drive, Urbandale, IA 50322                                                              |                         |

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**State of Iowa: Iowa Office of the Chief Information Officer**

|                                                                                                                                 |                         |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| By (Authorized Signature)<br>                | Date Signed<br>6-7-2017 |
| Printed Name and Title of Person Signing<br>Robert von Wolffradt, CIO                                                           |                         |
| Address<br>Iowa Office of the Chief Information Officer<br>1305 E. Walnut St.<br>Hoover Bldg. – Level B<br>Des Moines, IA 50319 |                         |

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## **Drupal Managed Services Contract Terms and Conditions**

This Agreement for Drupal Managed Services (this “**Agreement**”), made and effective as of the date of last signature identified on the Contract Declarations and Executions Page (“**Effective Date**”), by and between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer (the “**Office**”), and Webspec Design, LLC, a limited liability company organized under the laws of Iowa (“**Contractor**”). The parties agree as follows:

### **Section 1. Purpose and Term**

**1.1 Purpose.** The purpose of this Agreement is to describe and clarify Contractor’s duties and obligations to provide professional services in connection with the continuing development, enhancement, management, maintenance, promotion and other Deliverables as defined in RFP1216185012 for the State of Iowa Drupal content management system (the “**System**”).

**1.2 Term.** The initial term of this Agreement is for one year, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the State shall have the option to extend this Agreement for up to nine (9) additional one-year renewal terms. The decision to extend the Agreement for any renewal term will be upon the mutual agreement of the parties, which shall be exercised in writing. Contractor acknowledges and agrees that it will neither request nor require any changes to this Agreement, any Statement of Work, or any other agreement between the parties, as a condition or condition precedent to its agreement to extend or renew any term of this Agreement. Any extension or renewal of the term of this Agreement will be upon and subject to the same terms and conditions as are contained in this Agreement (including, any Statements of Work), except as may otherwise be agreed to by the Office.

### **Section 2. Definitions**

The following terms shall be defined as set forth below. In the event of any inconsistency between these Definitions and any terms as defined in the RFP, the following definitions shall govern:

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

“**Acceptance Criteria**” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the State 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 State to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the State, as determined by the State in its sole discretion.

“**Agreement**” or “**Contract**” means the collective documentation memorializing and governing the relationship between the State and Contractor and includes these ITQ Contract Terms and Conditions, any subsequent bid document(s), and Contractor’s response.

“**Authorized Persons**” mean independent contractors, consultants, subcontractors, or other Third Parties who are employed, retained, or hired to maintain, modify, repair, support, host, test or enhance the System, or other Deliverables, or to otherwise assist the State with their use of the System, or other Deliverables, or perform other duties as directed by the State..

“**Breach of security**” or “**Security Breach**” as defined in Iowa Code 715C.1 means unauthorized acquisition of personal information maintained in computerized form by a person that compromises the security, confidentiality, or integrity of the personal information. Good faith acquisition of personal information by a person or that person’s employee or agent for a legitimate purpose of that person is not a breach of security, provided that the personal

information is not used in violation of applicable law or in a manner that harms or poses an actual threat to the security, confidentiality, or integrity of the personal information.

**“Contract Value”** is defined as the aggregate total compensation to be paid by the State to the Contractor as measured at the level of the individual procurement released pursuant to this ITQ. “Contract Value” for purposes of this ITQ shall NOT be construed as the total spend for all of Contractor’s awarded bids pursuant to this ITQ. For the sake of clarification, if Contractor #1 is awarded ITQ-RFB#1 and subsequently is awarded ITQ-RFP#2, each awarded bid is considered a separate Contract, each with individually exclusive Contract Values as measured by their individually negotiated Deliverable(s) and Statement(s) of Work.

**“Contractor”** means the “Successful Respondent” or ITQ pre-qualified Contractor who has executed a Contract pursuant to a successful bid and award under this ITQ.

**“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 Agreement.

**“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.

**“Governmental Entity”** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4), or any successor provision to that section. The term Governmental Entity shall include Iowa agencies, independent agencies, departments, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, and councils, examining boards, offices of elective constitutional or statutory officers, and other units or entities of government. Governmental Entity, for the purposes of this Agreement, also means other governmental entities in other states in the United States outside of the State of Iowa.

**“Non-Public Data”** means data, other than PII, that is not subject to distribution to the public as public information as defined as a Confidential Record by Iowa Code Section 22.7. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

**“Office”** means the Office of the Chief Information Officer.

**“Personally Identifiable Information” or “PII”** as defined in Iowa Code 715.3 means any of the following information with respect to the owner or operator of a computer:

- i. The first name or first initial in combination with the last name.
- ii. A home or other physical address including street name.
- iii. An electronic mail address.
- iv. Credit or debit card number, bank account number, or any password or access code associated with a credit or debit card or bank account.
- v. Social security number, tax identification number, driver’s license number, passport number, or any other government-issued identification number.
- vi. Account balance, overdraft history, or payment history that personally identifies an owner or operator of a computer.

**“Security Incident”** means the potentially unauthorized access by non-authorized persons to PII or non-public data the Contractor believes could reasonably result in the use, disclosure or theft of a State’s unencrypted PII or non-public data within the possession or control of the Contractor. A security incident may or may not turn into a security

breach.

**“Specifications”** means all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Agreement, the Documentation, the ITQ, and the Submission. 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 Agreement by reference as if fully set forth in this Agreement.

**“State”** means the State of Iowa, the Office, and all State of Iowa agencies, boards, and commissions, and political subdivisions of the State of Iowa, to which this Agreement is available.

**“State Data”** means all data created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State’s hardware, the Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor.

**“State Identified Contact”** means the Office of the Chief Information Officer’s Chief Information Security Officer (CISO).

**“Software-as-a-Service” (SaaS)** means the capability provided to the consumer to use the provider’s applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

**“System”** means the State of Iowa Drupal content management system and related processes as more fully defined in RFP1216185012.

### **3. Documents Incorporated**

- 3.1. **Incorporation.** The State’s Request for Proposal No. 1217185012 for Drupal Managed Services (“RFP”) and Contractor’s proposal dated April 10, 2017, in response to the RFP (“Proposal”), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement
- 3.2. **Contractual Obligations.** The terms and conditions of the RFP and of the Proposal are made contractual obligations of Contractor, except that any proposed revisions or modifications made by Contractor to the ITQ Managed Services Terms and Conditions attached to the RFP shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Contractor or the State hereunder, unless expressly stated herein.
- 3.3. **Preference.** In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.
- 3.4. **No Inconsistency.** The references to the parties’ obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Contractor of the contractual obligations imposed by the terms of the RFP and the Proposal. For the avoidance of doubt, Contractor will be responsible for meeting all of the requirements and performing all duties and obligations set forth in the RFP unless otherwise directed or agreed to by the State. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the State shall have only those obligations that are expressly

stated in this document, and the Proposal does not create any express or implied obligations of the State.

#### **4. Scope of Work and Contractor Obligations.**

- 4.1. Scope of Work.** Contractor shall provide the State, the Office, and other Governmental Entities, as applicable, all of the Deliverables specified in the Statements of Work attached herein to Schedule A and in accordance with all other terms and conditions of this Agreement. Deliverables in the form of Documentation and Source Code must be clear, concise, factual and complete. Contractor shall provide all such Deliverables in a format deemed acceptable to the State, and as otherwise required herein or in the applicable Statement of Work.
- 4.2. Amendments to Schedule A, Statements of Work, and Specifications.** The parties agree that Schedule A, Statements of Work, and Specifications may be replaced, amended or revised at any time during the term of this Agreement upon the mutual written consent of the parties.
- 4.3. Performance Standards.** The parties agree that the performance standards, Performance Measures and related payment, monitoring and review provisions set forth in Schedule B are incorporated herein by this reference as if fully set forth in this Agreement.
- 4.4. Transition Duties in the Event of Expiration or Termination.** Contractor agrees that in connection with the termination or expiration of the Agreement, Contractor shall perform such Services and provide such Deliverables as the State may request in accordance with the terms and conditions of this Agreement for a transition period up to twelve (12) months from the time of notification of termination by either party or expiration, whichever occurs earlier. As part of the State's request, the State shall notify the Contractor of the number of months during which the Contractor shall continue to perform transition Services under this provision. The Contractor shall use its best efforts to make an orderly transition of its services to the State or to any successor selected by the State and shall perform any and all tasks contemplated in this Agreement in good faith that are necessary to assist in preserving the integrity of Network operations. Contractor agrees that it shall perform any such transition in a professional and businesslike manner, and shall comply with the reasonable requests of the State and any successor Contractor to assist in the effort to accomplish a successful, seamless and unhindered transfer of Contractor's responsibilities under this Agreement. Subject to Contractor's compliance with the relevant terms of this Agreement, State agrees to pay to Contractor during such transition period on a time and materials basis. The applicable hourly rates per resource during the transition period shall comply with the then current hourly consulting rates first established in Contractor's Cost Proposal.
- 4.5. Prioritization.** The State reserves the right provide strategic direction and prioritize particular Statement(s) of Work or Deliverables to ensure timely delivery of the highest value projects. The State also reserves the right to assign lower priority work to internal State resources or wherever else may be required to accomplish the State's goals.
- 4.6. Help Desk.** Contractor will provide help desk support related to the authorized Statements of Work by providing phone and e-mail assistance to users.
- 4.7. Help Desk Availability.** Contractor will make help desk support available during regular State business days from 8:00 a.m. to 5:00 p.m.
- 4.8. Delivery of Source Code.** Contractor shall furnish and deliver to the State a complete and updated copy of all Source Code (on a media and in an electronic format reasonably acceptable to the State) and updated Documentation (including any existing written information necessary or desirable for the maintenance, modification, compilation, and/or enhancement of the System): (within five (5) business days of receiving any written notice from the State (which notice may be provided at any time, including during the term of this Agreement and at or after expiration or termination of this Agreement)). When providing requested Source Code, Contractor will also provide to the State any existing software, documentation or other materials necessary to access, use, translate, interpret, or modify the Source Code for any use by the State. Contractor will not, under any circumstances, withhold or refuse delivery of Source Code and

Documentation for any reason, including for cause or as a result of any breach by the State of any of its obligations under this Agreement. The State will make requests for Source Code only when the State determines, in its sole discretion, that receiving Source Code and Documentation is either:

- 4.8.1. Necessary or desirable to protect the interests of the State (by way of illustration and not of limitation, the State has any concerns regarding: (i) the Contractor's business, financial condition, or security measures, (ii) Contractor's (or any Contractor Affiliate's or subcontractor's) performance under this Agreement, any Statement of Work, any hosting agreement, or any other agreement related to this Agreement, (iii) Contractor's (or any Contractor Affiliate's or subcontractor's) ability to fulfill any of its future obligations under this Agreement, any Statement of Work, any hosting agreement or any other agreement related to this Agreement, (iv) the performance, reliability, or security of any application, website, the System, or Contractor's network, hosting or backup facilities; (v) the security, privacy, accessibility or integrity of any State Data; (vi) Contractor's ability to make timely progress with respect to any Statement of Work or Contractor's ability to provide or develop the System or other Deliverables that will meet the needs of the State, (vii) that the System, any application, or Deliverable is outdated, not functioning or being utilized as intended, or is not otherwise serving the needs of the State or its citizens, or (viii) any proposed, announced or concluded merger, sale, or other transaction involving the Contractor or the assets of the Contractor; or
- 4.8.2. Necessary or desirable to serve the best interests of the State (by way of illustration and not of limitation, the State determines: (i) that Contractor resources should be redeployed to develop, maintain, support or market other applications, Deliverables or Projects (including, but not limited to, higher value Projects from a revenue generating, relative value/cost, or prioritization standpoint), (ii) the State needs the Source Code and Documentation because of a change in law or other significant occurrence, (iii) to terminate any agreement or relationship between the parties, or, (iv) to take over hosting of an application or software or transition hosting to another provider). The foregoing examples are not intended to be exhaustive and shall not be construed to define or limit the circumstances under which the State may request Source Code and Documentation. Notwithstanding any provision of this Section 4.8, or any other provision in this Agreement to the contrary, the Contractor is not granting to the State under this Agreement any perpetual license rights to use any Source Code for any software offered or provided by Contractor under any other agreement.

## **5. Compensation and Additional Rights and Remedies**

- 5.1. **Pricing.** The Contractor will be compensated in accordance with the payment terms outlined in the Agreement and all relevant Statement(s) of Work.
- 5.2. **Invoices / Payment Terms:** The Contractor shall submit invoices in accordance with the payment timelines identified in Schedule A Statements of Work. Payment may be structured on a monthly/quarterly recurring basis or upon the receipt and Acceptance of particular Deliverables as determined in the Statement of Work. The invoice shall comply with all applicable rules concerning payment of such claims. The State shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The State shall pay all approved invoices in arrears and in conformance with Iowa Code 8A.514. The State 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.
- 5.3. **The State has established rules for limitations on reimbursement expenses.** Please reference Department of Administrative Services - State Accounting Enterprise Procedure 210 (accessible on the internet) for limits on travel expenses.
- 5.4. **Withholding Payments.** In addition to pursuing any other remedy provided herein or by law, the State may withhold compensation or payments to Contractor, in whole or in part, without penalty to the State or work stoppage by Contractor, in the event the State determines that: (i) Contractor has failed to perform any of its duties or obligations as set forth in this Agreement; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency caused by the Contractor. No interest shall accrue or be paid to Contractor on any compensation or other amounts withheld or retained by the State under this Agreement.

**5.5. Setoff Against Sums Owed by the Contractor.** In the event that Contractor owes the State any sum under the terms of the Agreement, any other contract or agreement, pursuant to a judgment, or pursuant to any law, the State may, in its sole discretion, set off any such sum against: (1) any sum invoiced by, or owed to, Contractor under the Agreement, or (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.

**5.6. Administrative Fees.** Without affecting the approved product and/or services prices or discounts specified in the Agreement, the contractor shall provide to the State of Iowa a 1.00% administrative fee on all sales made and resulting from this Managed Services ITQ. The 1.00% administrative fee is to be paid quarterly to the Iowa Office of the Chief Information Officer, Business Service Division, Hoover State Office Building, Level B, Des Moines IA 50319, Attn: Business Services Division Administrator. Payment shall be made in accordance with the following schedule:

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

## **6. Termination**

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

- 6.1.1.** Contractor furnished any statement, representation, warranty or certification in connection with the Agreement, the ITQ or the Submission that is false, deceptive, or materially incorrect or incomplete;
- 6.1.2.** 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;
- 6.1.3.** Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- 6.1.4.** Contractor terminates or suspends its business;
- 6.1.5.** 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 Agreement is suspended, terminated, revoked, or forfeited;
- 6.1.6.** 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 Agreement;
- 6.1.7.** The State determines or believes the Contractor has engaged in conduct that: (a) has or may expose the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- 6.1.8.** 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;
- 6.1.9.** Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Agreement pertaining to confidentiality or privacy; or
- 6.1.10.** 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:
  - 6.1.10.1.** 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;

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

**6.1.10.3.** Making an assignment for the benefit of creditors;

**6.1.10.4.** 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 Agreement; or

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

**6.2. Termination upon Notice.** Following thirty (30) days written notice, the State may terminate this Agreement 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.

**6.3. Termination Due to Lack of Funds or Change in Law.** Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the State shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

**6.3.1.** The legislature or governor fail in the sole opinion of the State to appropriate funds sufficient to allow the State to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or

**6.3.2.** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the State to make any payment hereunder are insufficient or unavailable for any other reason as determined by the State in its sole discretion; or

**6.3.3.** If the State's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

**6.3.4.** If the State's duties, programs or responsibilities are modified or materially altered; or

**6.3.5.** 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 State's ability to fulfill any of its obligations under this Agreement. The State shall provide Contractor with written notice of termination pursuant to this section.

**6.4. Limitation of the State's Payment Obligations.** In the event of termination of this Agreement for any reason by either party (except for termination by the State pursuant to Section 6.1), the State 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 Agreement up to and including the date of termination of this Agreement and for which the State is obligated to pay pursuant to this Agreement; provided however, that in the event the State terminates this Agreement pursuant to Section 6.3, the State'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 6.4 in no way limits the rights or remedies available to the State and shall not be construed to require the State to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Agreement, or any amounts withheld by the State in accordance with the terms of this Agreement. The State shall not be liable, under any circumstances, for any of the following:

**6.4.1.** The payment of unemployment compensation to Contractor's employees;



- 6.4.2. The payment of workers' compensation claims, which occur during the
  - 6.4.3. Agreement or extend beyond the date on which the Agreement terminates;
  - 6.4.4. Any costs incurred by Contractor in its performance of the Agreement or any SOW, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement;
  - 6.4.5. 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 Agreement;
  - 6.4.6. Any taxes Contractor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.
- 6.5. Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the State, Contractor shall:
- 6.5.1. Cease work under this Agreement 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 Agreement and such other matters as the State may require.
  - 6.5.2. Immediately cease using and return to the State any property or materials, whether tangible or intangible, provided by the State to Contractor.
  - 6.5.3. Cooperate in good faith with the State and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement Contractor.
  - 6.5.4. Immediately return to the State any payments made by the State for Deliverables that were not rendered or provided by Contractor.
  - 6.5.5. Immediately deliver to the State any and all Deliverables for which the State 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.
- 6.6. Termination for Cause by Contractor.** Contractor may only terminate this Agreement for the breach by the State of any material term, condition or provision of this Agreement, if such breach is not cured within sixty (60) days of the State's receipt of Contractor's written notice of breach.
- 7. Confidential Information.**
- 7.1. Access to Confidential Information.** The Contractor's employees, agents and subcontractors may have access to confidential information, as defined in Iowa Code Chapter 22.7, maintained by the State to the extent necessary to carry out its responsibilities under the Agreement. The Contractor shall presume that all information received pursuant to this Agreement is confidential unless otherwise designated by the State. The Contractor shall provide to the State 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 Agreement. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Agreement. The private or confidential information shall remain the property of the State at all times.
  - 7.2. No Dissemination of Confidential information.** No confidential information collected, maintained, or used in the course of performance of the Agreement shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the State, either during the period of the Agreement or thereafter. Any data supplied by the State to the Contractor or created by the Contractor in the course of the performance of this Agreement shall be considered the property of the State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of the State. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

- 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 State and cooperate with the State in any lawful effort to protect the confidential information.
- 7.4. Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the State any unauthorized disclosure of confidential information in compliance with Iowa Code 715C.
- 7.5. Survives Termination.** The Contractor's obligations under this section shall survive termination or expiration of this Agreement.
- 8. Indemnification.**
- 8.1.** Contractor and its successors and permitted assigns shall indemnify and hold harmless the Agency, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) directly or indirectly related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:
- 8.1.1.** Any violation or breach of any term or condition of this Agreement by or on behalf of Contractor, including, the furnishing or making by Contractor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading; or
- 8.1.2.** Any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Contractor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors; or
- 8.1.3.** Contractor's performance or attempted performance of this Agreement; or
- 8.1.4.** Failure by Contractor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, federal and international laws, rules, ordinances and regulations; or
- 8.1.5.** Any failure by Contractor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State; or
- 8.1.6.** Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including any claim that all or any part of the System 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 proprietary right of any Third Party.
- 8.2.** Contractor's obligations under this Section 8 are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.
- 8.3.** Contractor shall be liable for any personal injury or damage to property caused by the fault or negligence of Contractor, its officers, directors, employees, agents and approved contractors or subcontractors. The Contractor's performance or attempted performance of this Agreement, including any agent or subcontractor utilized or employed by the Contractor;
- 8.4.** Contractor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Agency or any other Indemnatee.
- 9. Limitations of Liability.** Only to the extent permitted by and not prohibited by applicable laws and regulations, the maximum liability of either party under this Agreement shall be one times the Contract Value; provided, however, that under no circumstances shall the foregoing limitation apply to:
- 9.1.** Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence

of Contractor, its officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors,

- 9.2. Claims related to death, bodily injury, or damage to real or personal property,
- 9.3. Any contractual obligations of the Contractor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, confidential information, or Security Breach.
- 9.4. Any claims arising under provisions of the Agreement calling for indemnification of the State for third-party claims against the State for bodily injury to persons or for damage to real or tangible personal property caused by the Contractor's negligence or willful conduct.

## 10. Insurance.

10.1. Contractor shall, at its sole expense, maintain in full force and effect, with insurance companies of recognized responsibility and reasonably acceptable to the State, insurance covering its work of the type and in amounts required by this Agreement. Contractor's coverages set forth below shall apply to covered claims arising during Contractor's performance of this Agreement. All such insurance policies shall remain in full force and effect for the entire term of this Agreement and shall not be canceled or modified to the State's detriment (e.g., a decrease in coverage amounts) without the State's prior written consent.

10.2. **UNLESS OTHERWISE REQUESTED BY THE STATE, CONTRACTOR SHALL, AT ITS SOLE COST, CAUSE TO BE ISSUED AND MAINTAINED IN EFFECT DURING THE ENTIRE TERM OF THIS AGREEMENT NOT LESS THAN THE INSURANCE COVERAGES SET FORTH BELOW EACH NAMING THE STATE, THE OFFICE AND ANY GOVERNMENTAL ENTITY SPECIFIED IN THE STATEMENT OF WORK AS AN ADDITIONAL INSURED OR LOSS PAYEE, AS APPLICABLE:**

| Type of Insurance                                                                       | LIMIT                        | AMOUNT                  |
|-----------------------------------------------------------------------------------------|------------------------------|-------------------------|
| General Liability (including contractual liability) written on an occurrence basis      | General Aggregate Products – | \$2 million             |
|                                                                                         | 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<br>Information Technology Errors and Omissions Insurance | Each Occurrence              | \$1 Million             |
|                                                                                         | 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 |

10.3. **Claims Provision.** All insurance policies required by this Agreement must provide coverage on an "occurrence basis" for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy, unless otherwise agreed to in writing by the State. The policy for Technology Errors and Omissions Insurance may provide coverage on a "claims made" basis, provided, however, that such policy will either: (i) include extended reporting period or tail coverage that must be in effect for a duration of not less than thirty-six (36) months from the later of the completion, expiration or termination of the Agreement; or (ii) remain continuously in effect for a period of not less than 36 months following the later of completion, expiration or termination of the Agreement; provided, however, that the policy and coverage described in (i) or (ii) above must be acceptable to the State, as determined by the State in its sole discretion, and Contractor must furnish a certificate of

coverage, in form and substance acceptable to the State, with respect to such policy and coverage. The parties agree to negotiate in good faith within 60 days following the execution of this Agreement to ensure that the State receives coverage protections pertaining to Technology Errors and Omissions Insurance that are acceptable to the State.

Without limiting the foregoing, if the State consents to any of the required insurance policies providing coverage on a "claims made" basis, any extended reporting period or tail coverage will be required to be in effect for a duration of not less than thirty-six (36) months from the later of the completion, expiration or termination of the Agreement. The State may, but is not obligated to, agree to accept continuous "claims made" coverage in lieu of "tail" coverage, provided its retroactive date is on or before the Effective Date of this Agreement. Contractor shall furnish certification (that must be acceptable to the State) of any extended reporting period, tail coverage or continuous coverage that has been determined by the State to be acceptable.

**10.4. Certificates of Coverage.** Certificates of the insurance described above shall be submitted to the State within thirty (30) days after the effective date of this Agreement and shall be subject to approval by the State. Contractor shall provide certificates for the coverages required. 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 State.

**10.5. Waiver of Subrogation Rights.** Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State, the Office, and any specified Governmental Entity. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

**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 State liable in any manner for the resulting changes. The State 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 Agreement to address the legislative change. Nothing in this Subsection shall affect or impair the State's right to terminate the Agreement pursuant to the termination provisions.

## **12. Intellectual Property.**

**12.1. Ownership and Assignment of Deliverables.** Contractor agrees that the State and the Office shall become the sole and exclusive owners of all Deliverables, excluding Third Party Software, 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 ("State-Owned Deliverables"). Contractor represents and warrants that the State and the Department shall acquire good and clear title to all State-Owned 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 State-Owned Deliverables and shall not use any State-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Department and the payment of such royalties or other compensation as the Department deems appropriate. Immediately upon the request of the Department, Contractor will deliver to the Department or destroy, or both, at the Department's option, all copies of any State-Owned Deliverables in the possession of Contractor.

**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.

**12.3. Further Assurances.** At the State's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the State 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 Section 12.1.

### **13. Representations, Warranties and Covenants.**

**13.1. Contractor Warranties.** Contractor represents and warrants that: (a) it has the full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein, and its performance of this Agreement does not violate or conflict with any agreement to which Contractor is a party; (b) the Services will be performed in a professional, workmanlike, and timely manner; (c) all Services and Deliverables shall materially conform to the applicable Specifications and all other requirements set forth in this Agreement at all times during the Term; (d) to the best of Contractor's knowledge as of the Effective Date, the Services and the Deliverables do not and will not contain defamatory or indecent matter, and the State of Iowa's permitted use of the Services and Deliverables do not and will not infringe the intellectual property rights of any third party; (e) there is no pending or threatened litigation that would have a material adverse impact on its performance under the Agreement; (f) it shall not store, transmit or make available any of the State of Iowa's Confidential Information, including PII, with or to any entity or individual outside the continental United States; (g) the Documentation shall be complete and accurate so as to enable a reasonably skilled State of Iowa user to effectively use all of its features and functions without assistance from Contractor and, on each date on which Contractor delivers it to the State of Iowa, the Documentation is Contractor's most current version thereof; (h) there is no existing pattern or repetition of material customer complaints regarding the Deliverables or Services, including functionality or performance issues, and that Contractor's engineers have not currently identified any repeating adverse impact on the Deliverables or Services, including functionality or performance, for which the root cause is believed to be a flaw or defect in the Deliverables or Services; (i) it shall use industry best practices to scan and remove any viruses, worms, Trojan horses, and other similar harmful or destructive code from the Services and Deliverables; and (j) Contractor is not in arrears with respect to the payment of any monies due and owing the State of Iowa or any Governmental Entity thereof, including but not limited to the payment of taxes and employee benefits.

**13.2. Deliverables.** Contractor represents and warrants that: (a) all Deliverables, excluding Third Party Software, shall be wholly original with and prepared solely by Contractor; (b) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the State of Iowa hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the State of Iowa without violating any rights of any third party; (c) 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 State of Iowa herein; and (d) the State of Iowa shall peacefully and quietly use and enjoy the Deliverables without suit, disruption or interruption.

**13.3. Compliance with Applicable Laws.** Contractor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws relating to privacy and information security, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa State of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Contractor shall comply with any applicable reporting and compliance standards of the Iowa State of Management regarding equal employment. Contractor may be required to submit its affirmative action plan to the Iowa State of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Contractor shall make the provisions of this Section 13.3 a part of its contracts with any subcontractors providing goods or services related to Contractor's performance of this Agreement. Contractor further represents, warrants and covenants that the Services and Deliverables comply with and will at all times comply with the State of Iowa Website



Accessibility Standard (available at <http://ocio.iowa.gov/download/file/fid/25>) and including Section 508 of the Rehabilitation Act of 1973, as amended, all standards and requirements established by the Architectural and Transportation Barriers Access Board, and the World Wide Web (W3C) Web Accessibility Initiative. Without limiting the foregoing, Contractor covenants that the Application Services will pass W3C validation and meet the accessibility standards of 36 C.F.R. § 1194, which implements Section 508 of the Rehabilitation Act of 1973.

**13.4. Material Breach.** The State of Iowa may consider the failure of Contractor to comply with any law or regulation as a material breach of this Agreement.

**13.5. The State of Iowa's Warranty.** Subject to Section 11, the State of Iowa represents and warrants that, at all times during the Term, the State of Iowa shall have the full power to enter into and perform this Agreement.

#### **14. Acceptance Tests, Project Management, and Key Personnel.**

**14.1.** Contractor shall commence and complete all work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Specifications and other requirements specified in this Agreement, including those which may be specified in any Statement(s) of Work.

**14.2.** Except as otherwise specified in this Agreement and any relevant Statement(s) of Work, all Deliverables shall be subject to the State's Acceptance Testing and Acceptance. Upon completion of all work to be performed by Contractor with respect to any Deliverable, Contractor shall deliver a written notice to the State certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the State 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 State. At the State's request, Contractor shall assist the State in performing Acceptance Tests at no additional cost to the State if stated in the Statement of Work and at the State's request. Within a reasonable period of time after the State has completed its Acceptance Testing, the State 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 State determines that a Deliverable satisfies its Acceptance Tests, the State shall provide Contractor with notice of Acceptance with respect to such Deliverable. If the State determines that a Deliverable fails to satisfy its Acceptance Tests, the State shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the State provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall correct and repair such Deliverable and submit it to the State within ten (10) days of Contractor's receipt of notice of Non-acceptance so that the State may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the State 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 State shall have the continuing right, at its sole option, to:

**14.2.1.** Require Contractor to correct and repair such Deliverable within such period of time as the State may specify in a written notice to Contractor;

**14.2.2.** 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);

**14.2.3.** 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 State's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the State to correct such Deficiencies; or

**14.2.4.** Terminate this Agreement and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 6.1 of this Agreement, the State may terminate this Agreement pursuant to this section without providing Contractor with any notice or opportunity to cure provided for in Section 6.1. The State's right to exercise the foregoing rights and remedies, including termination of this Agreement, shall remain in effect until Acceptance Tests are successfully completed to the State's satisfaction and the State has provided Contractor with written notice of Final Acceptance. If the State determines that all Deliverables satisfy its Acceptance Tests,

the State 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 State's rights to enforce the terms of this Agreement or require performance in the event Contractor breaches this Agreement or any Deficiency caused by the contractor is later discovered with respect to such Deliverable(s).

#### **14.3. Project Management and Reporting**

**14.3.1. Project Manager.** At the time of execution of this Agreement, Contractor shall designate, in writing, a Project Manager acceptable to the State to serve until the expiration of this Agreement. Contractor will assign a Project Manager sufficient to assure timely responses from all Contractor personnel, timely completion of tasks and achievement of milestones. Contractor represents that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Contractor's Project Manager shall be able to make binding decisions pursuant to this Agreement on behalf of and for Contractor.

**14.3.2. Reports.** Contractor shall provide the State with reports as further described in Schedule B, and any applicable Statement(s) of Work.

**14.3.3. Problem Reporting Omissions.** The State's receipt of a report that identifies any problems shall not relieve Contractor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that the State may have. The State's failure to identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance under this Agreement.

**14.3.4. Change Order Procedure.** The State may at any time request a modification to the Statement of Work using a change order. The following procedures for a change order shall be followed:

**14.3.4.1. Written Request.** The State shall specify in writing the desired modifications to the Statement of Work.

**14.3.4.2. Contractor's Response.** Contractor shall submit to the State any proposed modifications to the Statement of Work and a firm cost proposal, if applicable, for the requested change order. Contractor agrees that there will be no additional cost or compensation paid to Contractor for or with respect to any change order requests for modifications, deliverables, modules or functionality that are consistent with the RFP or the Proposal. In the event a change order requests modifications, deliverables, modules or functionality, that is not consistent with the RFP and Proposal, or that cannot be provided using existing resources, the Contractor shall provide documentation for any costs associated with a change order. The State shall review such documentation and determine whether it would like to proceed with such change order and negotiate payment for any increased costs. Upon agreement with respect to the change order, including any increased costs, the parties will execute a written change order.

**14.3.4.3. Effect of Change Order.** Both parties must sign and date the change order to authorize the change in Deliverables described therein and incorporate the changes into the Statement of Work and this Agreement. No services shall be performed pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both parties. Upon such execution, a change order shall alter only that portion of a Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement.

#### **15. Contract Administration.**

**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 Agreement are not employees or agents of the State or any State, division or State of the State simply by virtue of work performed pursuant to this Agreement. Neither the Contractor nor its employees shall be considered

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

**15.2. Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when providing Deliverables under this Agreement, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this Agreement to be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Agreement. The Contractor may be required to submit its affirmative action plan to the State of Management to comply with the requirements of 541 IAC chapter 4. 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 State 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 Agreement and the copyright in and to such Deliverables.

**15.3. Non-Exclusive Rights.** This Agreement is not exclusive. The State reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Agreement and Statement(s) of Work.

**15.4. Compliance with Iowa Code chapter 8F.** If the Agreement 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 Agreement. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the State.

**15.5. Amendments.** This Agreement may be amended in writing from time to time by mutual consent of the parties.

**15.6. Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the State and the Contractor.

**15.7. Use of Subcontractors/Third Parties.** The State acknowledges that the Contractor may contract with subcontractors or third parties for the performance of any of the Contractor's obligations under this Agreement. The Contractor shall notify the State in writing of all subcontracts relating to Deliverables to be provided under this Agreement prior to the time the subcontract(s) become effective. The State 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 Agreement. **All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Office may deem necessary.** The Office shall have the right to request the removal of a subcontractor from the Agreement for good cause.

**15.8. Choice of Law and Forum.** This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. Contractor hereby irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall



be brought and maintained exclusively in the aforesaid court; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. The Contractor irrevocably consents to service of process by certified or registered mail addressed to the Contractor's designated agent. Nothing in this provision will alter the right of the State to serve process in any other manner permitted by law. This Section 10 shall survive termination of this Agreement.

- 15.9. Assignment and Delegation.** Contractor may not assign, transfer or convey in whole or in part this Agreement without the prior written consent of the State. 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 Agreement without the prior written consent of the State. 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 Agreement.
- 15.10. Integration.** This Agreement represents the entire Agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in this Agreement.
- 15.11. Headings or Captions.** The paragraph headings or captions used in this Agreement are for identification purposes only and do not limit or construe the contents of the paragraphs.
- 15.12. Not a Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.
- 15.13. 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 Agreement, and for any default of activities and obligations.
- 15.14. Supersedes Former Contracts or Agreements.** This Agreement supersedes all prior contracts or agreements between the State and the Contractor for the Deliverables to be provided in connection with this Agreement.
- 15.15. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the State 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 Agreement shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- 15.16. Notices.**
- 15.16.1.** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:
- If to the State: State of Iowa Office of the Chief Information Officer  
Attn: Business Services Division Administrator  
Hoover Building, B Level

1305 E. Walnut  
Des Moines, IA 50319

If to Contractor: Webspec Design, LLC  
Attn: Jeremiah Terhark  
5907 Meredith Drive  
Des Moines, IA 50322

**15.16.2.** Any notice or communication sent by U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

**15.16.3.** 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.

**15.17. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in this Agreement, 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.

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

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

**15.20. Authorization.** Contractor represents and warrants that:

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

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

**15.21. Successors in Interest.** All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

**15.22. Records Retention and Access.** The Contractor shall maintain accurate, current, and complete records of the financial activity of this Agreement which sufficiently and properly document and calculate all charges billed to the State throughout the term of this Agreement 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 State, 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 Agreement, 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 State reserves the right to address the Contractor's board or other

managing entity regarding performance and expenditures. When state or federal law or the terms of this Agreement require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

**15.22.1.** Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Agreement 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.

**15.22.2.** 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.

**15.22.3.** 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 State.

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

**15.23. Audits.** Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the State 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 State. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the State that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the State. See A-133 Section 21 for a discussion of subrecipient versus Contractor relationships. Contractor shall provide the State with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

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

**15.25. Solicitation.** The Contractor represents and warrants that no person or selling State has been employed or retained to solicit and secure this Agreement 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.

**15.26. Obligations Beyond Agreement Term.** This Agreement shall remain in full force and effect to the end of the specified term or until terminated pursuant to this Agreement. All obligations and transition duties of the State and the Contractor incurred or existing under this Agreement as of the date of expiration or termination will survive the termination or expiration of this Agreement.

**15.27. Counterparts.** The parties agree that this Agreement 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.

**15.28. Delays or Impossibility of Performance.** Neither party shall be in default under the Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or

impossibility is caused by a “force majeure.” The term “force majeure” as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance 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 Agreement; 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 Agreement unless the subcontractor or supplier is prevented from timely performance by a “force majeure” as defined in this Agreement. 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 State. 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.

- 15.29. Suspensions and Debarment.** The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal State or State. 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.
- 15.30. Conflict of Interest.** Contractor represents, warrants, and covenants that no relationship exists or will exist during the Agreement period between the Contractor and the State 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 Agreement. If a conflict of interest is proven to the State, the State may terminate this Agreement, and the Contractor shall be liable for any excess costs to the State 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 State.
- 15.31. Certification regarding sales and use tax.** By executing this Agreement, the Contractor certifies it is either (a) registered with the Iowa State 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(42) & (43). The Contractor also acknowledges that the State may declare the Agreement void if the above certification is false. The Contractor also understands that fraudulent certification may result in the State or its representative filing for damages for breach of contract.
- 15.32. 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 State 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.
- 15.33. 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 Agreement.

- 15.34. Reporting Requirements.** If this Agreement permits other State agencies and political subdivisions to make purchases off of the Agreement, the Contractor shall keep a record of the purchases made pursuant to the Agreement and shall submit a report to the State on a quarterly basis. The report shall identify all of the State agencies and political subdivisions making purchases off of this Agreement and the quantities purchased pursuant to the Agreement during the reporting period.
- 15.35. Immunity from Liability.** Every person who is a party to the Agreement is hereby notified and agrees that the State, the State, 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 Agreement.
- 15.36. Public Records.** The laws of the State require procurement records to be made public unless otherwise provided by law.
- 15.37. Use of Name or Intellectual Property.** Contractor agrees it will not use the State and/or State's name or any of their intellectual property, including but not limited to, the State, the Office, any State of Iowa 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 Office.
- 15.38. Taxes.** The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from [State and local sales and use taxes on the Deliverables](#).
- 15.39. No Minimums Guaranteed.** The Agreement does not guarantee any minimum level of purchases or any minimum amount of compensation.
- 15.40. Compliance to Iowa IT Policies and Standards.** Contractor will comply with and adhere to all State and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and provide training to Contractor's employees and subcontractors concerning such standards, procedures and protocols. Current standards are accessible online at <http://ocio.iowa.gov/standards/> Contractor will take all precautions and actions necessary to:
- 15.40.1.** Prevent unauthorized access to the State's systems, networks, computers, property, records, data, and information; and
- 15.40.2.** Ensure that all of the State's and the State's documentation, electronic files, data, and systems are developed, used, and maintained in a secure manner, protecting their confidentiality, integrity and availability. Contractor agrees that it will not copy, reproduce, transmit, or remove any State Data without the prior written consent of the State. Contractor agrees that it shall be liable for any damages, losses, and expenses suffered or incurred by the State as a result of: any breach of this section, or any breaches of security (including those described below) that are caused by any action or omission of Contractor or Contractor's employees, agents and subcontractors. Breaches of security include, but are not limited to: Disclosure of confidential or sensitive information; Unauthorized access to State systems; Illegal technology transfer; Sabotage or destruction of State information or information systems; Compromise or denial of State information or information systems; Damage to or loss of State information or information systems; and Theft. The Contractor shall immediately report to the State any such breach of security. In the event of a breach of this section or any breach of security as described herein, the State may terminate this Agreement immediately without penalty or liability to the State and without affording Contractor any opportunity to cure.

## **16. Additional Information Technology Terms and Conditions**

- 16.1. Data Ownership:** The State and Governmental Entities will be and remain the sole and exclusive owners of all data of any kind relating in any way to this Agreement, the Deliverables provided hereunder, and/or Contractor's performance of its duties under this Agreement, including, without limitation, all data in any

way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State, any Governmental Entity or any User (including by or through Contractor on behalf of the State or any Governmental Entity). The Governmental Entity that collects, stores, generates, or maintains information or data shall be considered a Data Custodian. The Data Custodian shall retain ownership of any and all such data, including any data associated with their application at any time. The Data Custodian must approve all access to its data. The Contractor shall not access State user accounts or State data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Agreement or (4) at the State's written request. In the interest of clarity, "data" as referred to in this Section 16.1 is not intended to refer to Source Code or Software except to the extent that any of these include, incorporate or otherwise utilize data that is owned by the State, including without limitation all data of any kind relating in any way to the Contractor, this Agreement, the Deliverables provided hereunder, and/or Contractor's performance of its duties under this Agreement, including, but not limited to, all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State, any Governmental Entity or any User (including by or through Contractor on behalf of the State or any Governmental Entity), in which case, any such data that is included or incorporated into, or otherwise utilized in connection with, the Contractor's proprietary Source Code or Software shall be and remain exclusively owned by the State, and Contractor hereby assigns any and all of its right title and interest in and to such data. Also, in the interest of clarity, to the extent Contractor incorporates or uses any data described above or otherwise owned by the State and incorporates such data into reports or other documents, software or deliverables, such data will not lose its status as State-owned data by virtue of such incorporation or use, and Contractor hereby assigns any and all of its right title and interest in and to such data.

**16.2. Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the following conditions:

- 16.2.1. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of PII and non-public data. Such security measures shall be in accordance with recognized industry practice (NIST 800-53 and ISO27001:2013 standards and controls) and not less stringent than the measures the Contractor applies to its own PII and non-public data of similar kind.
- 16.2.2. All data obtained by the Contractor in the performance of this Agreement shall become and remain the property of the State.
- 16.2.3. All PII shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the PII.
- 16.2.4. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The State shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and mutually agreed to as a part of this Agreement.
- 16.2.5. At no time shall any data or processes — that either belong to or are intended for the use of a State or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- 16.2.6. The Contractor shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

**16.3. Security Incident or Security Breach Notification:** The Contractor shall inform the State of any security incident or Security Breach.

- 16.3.1. Incident Response: The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Agreement. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Agreement.



- 16.3.2. Security Incident Reporting Requirements:** The Contractor shall report a security incident to the State identified contact within twelve (12) hours.
- 16.3.3. Breach Reporting Requirements:** If the Contractor has actual knowledge of a confirmed Security Breach that affects the security of any State content that is subject to applicable Security Breach notification law as required by Iowa Code 715C.2, the Contractor shall (1) promptly notify the State identified contact within 12 hours or sooner, unless shorter time is required by applicable law, and (2) take best effort measures to address the Security Breach in a timely manner.
- 16.4. Security Breach Responsibilities:** This section only applies when a Security Breach occurs with respect to PII within the possession or control of the Contractor.
- 16.4.1.** The Contractor, unless stipulated otherwise, shall within twelve (12) hours notify the State identified contact by telephone if it reasonably believes there has been a security incident.
- 16.4.2.** The Contractor, unless stipulated otherwise, shall promptly notify the State identified contact within 12 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Security Breach. The Contractor shall (1) cooperate with the State as requested by the State to investigate and resolve the Security Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Security Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- 16.4.3.** Unless otherwise stipulated, if a Security Breach is a direct result of the Contractor's breach of its contract obligation to encrypt PII or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Security Breach; (2) notifications to individuals, regulators or others required by Iowa Code 715C.2; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for Security Breaches in the United States (currently \$201 per record/person) in the most recent Cost of Security Breach Study: Global Analysis published by the Ponemon Institute<sup>17</sup> at the time of the Security Breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this Agreement's limitation of liability.
- 16.5. Background Checks:** The Contractor shall conduct nationwide criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the State's information among the Contractor's employees and agents.
- 16.6. Contract Audit:** The Contractor shall allow the State to audit conformance to the Agreement terms. The State may perform this audit or contract with a third party at its discretion and at the State's expense.
- 16.7. Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require best effort non-disclosure agreements, and limit staff knowledge of State data to that which is absolutely necessary to perform job duties.
- 16.8. Right to Remove Individuals:** The State shall have the right at any time to require that the Contractor remove from interaction with State any Contractor representative who the State believes is detrimental to its working relationship with the Contractor. The State shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the Agreement or future work orders without the State's consent.