



STATE OF IOWA
MASTER AGREEMENT

Contract Declaration and Execution

MA 005

23056

EFFECTIVE BEGIN DATE: 09-01-2022

EXPIRATION DATE: 08-31-2023

PAGE: 1 of 3

VENDOR:

LEXISNEXIS RISK SOLUTIONS FL
INC

LexisNexis Risk
00003091388

1000 ALDERMAN DR
ALPHARETTA, GA 30005

VENDOR CONTACT:

Gaurang Dave, Contracts Manager

PHONE: 202-378-1018

EMAIL: Gaurang.Dave@LNSSI.com

EXT:

ISSUER:

Craig Trotter

PHONE: 515-322-8593

EMAIL: craig.trotter@iowa.gov



FOB: FOB Dest, Freight Prepaid

Contract For:

Use of this MA23056 is open to all State of Iowa State Agencies and Political Subdivisions. LexisNexis Package and pricing can be found in the following document titled: IA MSA Packages & Pricing.

Contact the following LexisNexis representative for questions on packages and what will work best for your agency.

RENEWAL OPTIONS

FROM	09-01-2023	TO	08-31-2024
FROM	09-01-2024	TO	08-31-2025
FROM	09-01-2025	TO	08-31-2026
FROM	09-01-2026	TO	08-31-2027
FROM	09-01-2027	TO	08-31-2028

AUTHORIZED DEPARTMENT

ALL

SUB Other Governmental Entities



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LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
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1	0.00000	EA	94633	\$ 0.000000
				\$ 0.000000

REF DOC: REF VNDR LN: REF COMM LN: REF TYPE: FINAL

Collection Services, Financial Debt
Batch Processing for production records

Batch processing based on weekly batch volumes is \$0.20 per record.
Pricing is based per hit.

5% discount applies if monthly batch spend exceeds \$2,500.

2	0.00000	EA	94633	\$ 0.350000
				\$ 0.000000

REF DOC: REF VNDR LN: REF COMM LN: REF TYPE: FINAL

Collection Services, Financial Debt
Online Access Transaction Fee

Cost for online website access based on an unlimited number of weekly transactions. Pricing is based per hit. Pricing allows access to the Accruint online lookup service for an unlimited number of users.

Pricing is for a Person Search only which provides basic information such as address, directory-assistance phone number, SSN and LexID.

3	0.00000	EA	94633	\$ 0.000000
				\$ 0.000000

REF DOC: REF VNDR LN: REF COMM LN: REF TYPE: FINAL

Collection Services, Financial Debt
Additional Expansive Transaction Fees

Cost for expanded search transactions which are available within the Accurint online lookup service. Pricing is per hit unless otherwise indicated on the Accurint Transactional Price Sheet attached.
Pricing allows access to the Accurint online lookup service for an unlimited number of users.

4	0.00000	EA	95658	\$ 0.000000
				\$ 0.000000

REF DOC: REF VNDR LN: REF COMM LN: REF TYPE: FINAL

Professional Document and Publication Subscriptions (Legal,
Professional Document and Publication Subscriptions

Prices per attached document - IA MSA pricing proposal revised_09132022.



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TERMS AND CONDITIONS

Referenced Terms

The parties agree to comply with the terms and conditions pursuant to the bid process which are by this reference made a part of the Agreement.

THIS MASTER AGREEMENT IS EFFECTIVE AS OF THE LATEST DATE SHOWN IN "EFFECTIVE BEGIN DATE" IN THE UPPER RIGHT HAND CORNER OR THE DATE BELOW SIGNED BY THE STATE OF IOWA.

CONTRACTOR	STATE OF IOWA
CONTRACTOR'S NAME (If other than an individual, state whether a corp, partnership, etc. LexisNexis Risk Solutions FL Inc.	AGENCY NAME DAS Central Procurement
BY (Authorized Signature) Date Signed Haywood Talcove Digitally signed by Haywood Talcove Date: 2022.09.20 21:05:10 -04'00' Sept. 20, 2022	BY (Authorized Signature) Date Signed Craig Trotter Digitally signed by Craig Trotter Date: 2022.09.28 07:48:48 -05'00' 9/28/2022
Printed Name and Title of Person Signing Haywood Talcove, CEO (LNSSI)	Printed Name and Title of Person Signing Craig Trotter – Purchasing Agent III
Address 1000 Alderman Drive Alpharetta, GA 30005	Address Iowa Department of Administrative Services Hoover State Office Building, Level 3 1305 East Walnut Street Des Moines, IA 50319

General Terms and Conditions for Service Contracts/Solicitations
Effective 9/1/2022

1.1 Definitions

The following words shall be defined as set forth below:

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

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

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

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

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

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

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

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

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

“RFP” means the Request for Proposals or Request for Bids (and any Addenda thereto) identified on the Contracts Declarations and Execution Page(s) that was issued to solicit the Deliverables that are subject to the Contract.

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

“Special Terms” means the Contract attachment entitled “Special Terms” that contains terms specific to this Contract, including but not limited to the Scope of Work, contract payment terms, and any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms for Services Contracts and the Special Terms, the Special Terms shall prevail. Notwithstanding anything to the contrary in this Contract the State acknowledges that access to certain content in the LexisNexis Services (public records and personal information) is subject to a credentialing review to verify the customer has a permissible regulatory purpose. Access may be denied if the agency does not provide the documentation required in the credentialing review or if such documentation does not verify the permissible use.

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

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

1.2 Availability of Contract to Other Entities

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

1.3 Duration of Contract

The term of the Contract shall begin and end on the dates specified on the Contract Declarations & Execution Page(s), unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Agency may, in its sole discretion, exercise any applicable extension by giving the Contractor written notice of the extension decision at least sixty (60) days prior to the expiration of the initial term or renewal term.

1.4 Scope of Work

The Contractor shall provide Deliverables that comply with and conform to the Specifications. Access to and use of the Contractor’s services will be governed by Contractor’s Data License which consists of 1. LN Gov’t. Application, 2. LN Government Non-FCRA Permissible Purpose Certification, 3. LN Gov’t. Master Terms & Conditions, and 4. a schedule A. In addition, any addenda for specific products (i.e. AmplifyID, AVCC, Emailage, OTP, ThreatMetrix, TrueID, and ZetX EULA).

1.5 Compensation

1.5.1 Pricing

The Contractor will be compensated in accordance with the payment terms outlined in

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

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

1.5.2 The State has established rules for limitations on reimbursement expenses

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

1.5.3 Withholding Payments

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

- 1.5.3.1** Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or
- 1.5.3.2** Any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency.

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

1.5.4 Setoff Against Sums Owed by the Contractor

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

- 1.5.4.1** Any sum invoiced by, or owed to, Contractor under this Contract, or
- 1.5.4.2** Any sum or amount owed by the State to Contractor, unless otherwise required by law.

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

1.6 Termination

1.6.1 Immediate Termination by the State

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

- 1.6.1.1** In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such

license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

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

1.6.2 Termination for Cause by the Agency

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

- 1.6.2.1** Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- 1.6.2.2** Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 1.6.2.3** Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- 1.6.2.4** Contractor terminates or suspends its business;
- 1.6.2.5** Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- 1.6.2.6** Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- 1.6.2.7** The Agency determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Agency or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- 1.6.2.8** Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
- 1.6.2.9** Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or

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

- 1.6.2.10.1** Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
- 1.6.2.10.2** Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- 1.6.2.10.3** Making an assignment for the benefit of creditors;
- 1.6.2.10.4** Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or
- 1.6.2.10.5** Taking any action to authorize any of the foregoing. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

1.6.3 Termination upon Notice

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

1.6.4 Termination Due to Lack of Funds or Change in Law

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

- 1.6.4.1** The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or

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

1.6.5 Limitation of the State's Payment Obligations

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

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

1.6.6 Contractor's Termination Duties

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

- 1.6.6.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Agency may require.

- 1.6.6.2** Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.
- 1.6.6.3** Cooperate in good faith with the Agency and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
- 1.6.6.4** Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor.

1.6.7 Termination for Cause by Contractor

Contractor may terminate this Contract for the breach by the Agency of any material term, condition or provision of this Contract, if such breach is not cured within sixty (60) days of the Agency's receipt of Contractor's written notice of breach; provided, however, that in the following circumstances, the cure period shall be fifteen (15) days:

- 1.6.7.1** If Contractor reasonably determines that the actions, or failure to act, of Agency, its agents, employees or subcontractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized;
- 1.6.7.2** Agency fails to comply with confidentiality laws or provisions applicable to its performance under this Contract; or
- 1.6.7.3** Agency furnished any statement, representation, or certification in connection with this Contract or RFB1522005021 which is materially false, deceptive, incorrect, or incomplete.
- 1.6.7.4** If Contractor determines or reasonably suspects that continued provision of Deliverables to Customer entails a security risk to personally identifiable information provided to Agency by Contractor, Contractor may take immediate action, including, without limitation, terminating the delivery of, and the license to use, the Deliverables.

1.7 Confidential Information

1.7.1 Access to Confidential Information

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

1.7.2 No Dissemination of Confidential information

No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. Any data supplied by the Agency to the Contractor in the course of the performance of this Contract shall be considered the property of the Agency. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the written request of the Agency. This provision does not apply to data derived from Contractor's public records database. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

1.7.3 Subpoena

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

1.7.4 Reporting of Unauthorized Disclosure

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

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

1.7.6 Survives Termination

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

1.7.7 Confidential Information of the Contractor and its Suppliers

1.7.7.1 This Contract does not confer to Agency any right, license, interest or title in, to or under the proprietary and confidential information of Contractor and its data suppliers, and no license is granted to Agency under any patent, trademark, copyright, trade secret or other confidential or proprietary rights of Contractor, its affiliates or its data suppliers under this Contract.

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

confidential under Iowa or other applicable law, or if Contractor failed to properly request confidential treatment under the RFP, or if Contractor rescinds its request for confidential treatment.

1.7.8 Additional Confidentiality and Security Requirements.

Contractor agrees to the Agency's Confidentiality, Security Policy and Procedure Requirements as outlined in Appendix A to these Special Terms, which is attached hereto and made a part of the Contract by this reference.

1.8 Confidential Tax Information

1.8.1 Access to Confidential Information.

The Contractor's employees, agents and subcontractors may have access to confidential tax data maintained by the Agency to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the Department.

1.8.2 Performance.

In performance of the Contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees, agents, or subcontractors with the following requirements:

1.8.2.1 All work will be done under the supervision of the Contractor:

- a. 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 its duties under the Contract.
- b. The Contractor shall provide adequate supervision and training to its employees, agents, or subcontractors to ensure compliance with the terms of the Contract.
- c. The contractor shall provide acceptance by its employees, agents, or subcontractors, by signature, of the terms of federal and state confidentiality disclosure (see Exhibit 1 Acknowledgment of Statements of Confidentiality). Any disclosure of federal tax information shall be subject to penalties prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1. Any disclosure of state tax information as governed by the Iowa Code, Sections 422.20, 422.72, and 324.63, shall be subject to a fine of not less than \$100 or more than \$1,000 and/or be confined in jail for not less than thirty (30) days nor more than six (6) months.
- d. The Contractor shall provide to the Department 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.
- e. The contractor will maintain a list of employees, agents or subcontractors with authorized access to the Department's data. Such list will be provided to Agency and, when federal information is involved, to the Internal Revenue Service (IRS) reviewing office upon request.

f. No work furnished under this Contract will be subcontracted without prior written approval from the Department.

- 1.8.2.2** **Any tax information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract.** Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of its duties under this contract. Inspection by or disclosure to anyone other than an officer, employee, agent or subcontractor of the Contractor is prohibited
- 1.8.2.3** All tax information will be accounted for upon receipt and properly safeguarded in accordance with security requirements set forth in this Contract before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- 1.8.2.4** Upon completion of duties under this Contract or the specific direction of Agency, the Contractor will certify that the data processed and any output generated during the performance of duties under this Contract will be completely purged from all data storage components, including, but not limited to data center facility, laptops, computers and other storage devices. If immediate purging of all data storage components is not possible, the Contractor will ensure that any tax information remaining in any storage component will be safeguarded to prevent unauthorized disclosures until it has been purged.
- 1.8.2.5** Any damaged or intermediate output that may result during the processing of tax information will be given to the Department. When this is not possible, the contractor will be responsible for the destruction of the output, and will provide the Department with a statement containing the date of destruction, description of material destroyed, and the method used. Destruction method must meet specifications as defined in IRS Publication 1075 Section 8.3.
- 1.8.2.6** The contractor will ensure that all computer systems processing, storing, or transmitting tax information meets the computer system security requirements defined in IRS Publication 1075 Section 9.1. The security features of the computer systems must meet all functional and assurance requirements for the managerial, operational, and technical security controls. All security features must be available and activated to protect against unauthorized use of and access to tax information.
- 1.8.2.7** Any data supplied by Agency to the contractor or created by the contractor in the course of the performance of its duties under this Contract shall be considered the property of Agency. No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by the contractor except as authorized by law and only with the prior written consent of the Department, either during the period of the Contract or thereafter. The contractor may be liable for an unauthorized disclosure if it fails to comply with federal and state confidential safeguard requirements. Notwithstanding the foregoing or elsewhere in this Agreement, Contractor shall retain all right, title and interest with respect to all of its intellectual property and technology, including any and all Contractor data derived from its public records database ("Contractor IP") regardless of whether such information or technology is embedded in any Deliverables or

materials provided to the State in performance of this Agreement. Customer's right to use Contractor IP shall be consistent with the rights granted in the Contractor Data License and applicable law.

- 1.8.2.8** 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 Agency and cooperate with the Department in any lawful effort to protect the confidential information.
- 1.8.2.9** The contractor shall immediately, unless otherwise required by law, report to Agency any confirmed unauthorized disclosure or security breach of Customer confidential information. These include, but are not limited to:
- (i) Unauthorized access or disclosure of confidential information;
 - (ii) Illegal technology transfer;
 - (iii) Sabotage, destruction, theft or loss of confidential information or the information systems,
 - (iv) Confirmed compromise or denial of confidential information or information systems.
- 1.8.2.10** If the Department is required to notify taxpayers of a security or confidentiality breach solely caused by negligence or intentional misconduct of the Contractor, the Department is entitled to reimbursement of such reasonable costs related to this notification from the Contractor (see Iowa Code § 715C.2).
- 1.8.2.11** If the Contractor fails to provide the safeguards and deviates from material provisions described above, Agency will have the right to void the Contract immediately.

1.9 Indemnification

1.9.1 By the Contractor

The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments to any claims related to, resulting from, or arising out of:

- 1.9.1.1** Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor in the performance of Contractor's obligations hereunder;
- 1.9.1.2** Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;
- 1.9.1.3** Any third-party claim that the Deliverables, when used in accordance with this Contract, infringe the third-party's intellectual property or other proprietary rights: (i) Agency will promptly give written notice of any claim to Contractor; (ii) Agency will provide any assistance which Contractor may reasonably request for the defense of the claim (with reasonable expenses of Agency paid by Contractor); and (iii) Contractor has the right to control the defense or settlement of the claim; provided, however, that the Agency shall have the right to participate in, but not control, any litigation for which indemnification

is sought with counsel of its own choosing, at its own expense. Notwithstanding the foregoing, Contractor will not have any duty to indemnify, defend or hold harmless the Agency with respect to any claim of infringement resulting from (1) Agency's use of the Deliverables in a manner prohibited by the Contract; (2) Agency's failure to use any corrections provided by Contractor; (3) Agency's use of the Deliverables in combination with any product not provided or authorized in writing by Contractor or (4) Agency's use of the Deliverables in a manner contrary to the written instructions provided by Contractor that are consistent with this Contract. If an injunction or order is issued restricting the use or distribution of any part of the Deliverables, or if Contractor reasonably determines that any part of the Deliverables is likely to become the subject of a claim of infringement or violation of any proprietary right of any third-party, Contractor may in its sole discretion and at its option (A) procure for Agency the right to continue using the Deliverables; (B) replace or modify the Deliverables so that they become non-infringing, provided such modification or replacement does not materially alter or affect the use or operation of the Deliverables or cause them to be noncompliant with the Specifications ; or (C) terminate the Contract and refund any fees relating to the future use of the Deliverables.

1.9.2 Indemnification by the Agency

The State shall, only to the extent consistent with and permitted by Article VII, Section I of the Iowa Constitution and Iowa Code Chapter 669, indemnify the Contractor from and against any claim, as defined in Iowa Code Section 669.2, caused directly by the negligent or wrongful acts or omissions of any employee of the State, as defined in Iowa Code Section 669.2, while acting within the scope of the employee's office or employment in connection with the performance of this Contract. Contractor agrees that any claim for which indemnification is sought pursuant to this Section will be subject to the provisions of Iowa Code Chapter 669 and 543 Iowa Administrative Code 1, including, without limitation, those provisions which address the making and filing of claims. If the State makes any indemnity payments to the Contractor pursuant to this Section and the Contractor thereafter collects or recovers all or a portion of such amounts from any person or third party, including from any insurance carrier, Contractor shall promptly repay such collected or recovered amounts to the State. Agency expressly reserves the right to challenge its authority to indemnify.

1.9.3 Survives Termination

Indemnification obligations shall survive termination of this Contract.

1.10 Insurance

1.10.1 Insurance Requirements

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

payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

1.10.2 Types and Amounts of Insurance Required

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

1.10.3 Certificates of Coverage

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

1.10.4 Waiver of Subrogation Rights

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

1.11 Change Order Procedure

1.11.1 Change Order Procedure

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

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

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

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

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

1.12 Legislative Changes

The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative

change by either the federal or state government. The Agency shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. In the event the parties are unable to agree on changes to the Contract, either party will have the right to terminate the Contract. Nothing in this Subsection shall affect or impair the Agency's right to terminate the Contract pursuant to the termination provisions.

1.13 Intellectual Property

1.13.1 Grant of License

Contractor hereby grants to Agency the right and license to use the Deliverables solely for Customer's own internal business purposes and as set forth in Contractor's data license. Customer represents and warrants that all of Customer's use of the Deliverables shall be for legitimate business purposes relating to its business. Customer shall not use the Deliverables for marketing purposes or resell or broker the Deliverables to any third party, and shall not use the Deliverables for personal (non-business) purposes. Customer shall not use the Deliverables to provide data processing services to third parties or evaluate data for third parties. Agency shall not access the Deliverables from Internet Protocol addresses located outside of the United States and its territories without Contractor's prior written approval. Agency may not use the Deliverables to create a competing product. Customer shall comply with all laws, regulations and rules which govern the use of the Deliverables and information provided therein. Agency shall not reproduce, retransmit, republish, or otherwise transfer for any commercial purposes the Deliverables. Agency acknowledges that Contractor (and/or its third-party data providers) shall retain all right, title, and interest under applicable contractual, copyright, patent, trademark, Trade Secret and related laws in and to the Deliverables. Agency shall promptly notify Contractor of any threatened or actual infringement of Contractor's rights. Except as specifically provided herein, this Contract does not grant the Agency any right, title, interest, license (express or implied) to any patent, trademark, service mark, copyright, trade secret or proprietary right associated with the Deliverables.

1.13.2 Use of Marks

Neither party will use any trademark, service mark, trade name, nor other proprietary designation (collectively, "Marks") owned, licensed or registered by the other party without prior written consent. Neither party will use or reference the other's Marks in any manner that disparages or portrays the other in a negative light. Neither party may alter, modify, or change the other's Marks in any way.

1.13.3 Rights in Data

The Agency shall be and shall remain the owner of all data and records provided to Contractor. Contractor will not use the Agency's data and records for any purpose other than providing Deliverables under the Contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed to third parties or commercially exploited by or on behalf of Contractor. Contractor grants to the State license rights to its data as set forth in its Data License.

1.14 Warranties

1.14.1 Agency and Contractor each represent and warrant that:

(i) they have authority to execute this Contract and perform their obligations hereunder;

(ii) executing this Contract does not constitute a material conflict with, breach or default under any applicable law, their respective charter or bylaws, or any documents, Contracts or other instruments which are binding upon the parties; (iii) they have not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the other party; and (iv) this Contract creates valid, legal and binding obligations that are enforceable against the parties.

1.14.2 Contractor represents and warrants that: (1) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party; (2) Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and (3) the Agency shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

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

this Contract.

1.14.4 Contractor represents and warrants that the Deliverables (in whole and in part) shall: meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Special Terms. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the Deliverables,

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

1.14.6 Contractor represents and warrants

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

1.14.7 Obligations Owed to Third Parties

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

1.14.8 Disclaimer of Warranties

Except for the express warranties specifically set forth in this Contract, Contractor disclaims all other express or implied warranties including, without limitation, warranties of merchantability or fitness for a particular purpose, which relate to the Deliverables provided under this Contract. Further, Contractor does not warrant that Agency's use of the Deliverables will be uninterrupted or error-free.

1.15 Acceptance

1.15.1 Require Contractor to correct and repair such Deliverable within such period of time as

the Agency may specify in a written notice to Contractor;

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

1.16 Contract Administration

1.16.1 Independent Contractor

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

1.16.2 Incorporation of Documents

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

1.16.3 Intent of References to Bid Documents

The references to the parties' obligations, which are contained in this Contract, are intended to supplement or clarify the obligations as stated in the RFP and the Bid

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

1.16.4 Compliance with the Law; Nondiscrimination in Employment

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

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

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

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

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

1.16.5 Procurement

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

1.16.6 Non-Exclusive Rights

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

the term of this Contract.

1.16.7 Non-Supplanting Requirement

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

1.16.8 Compliance with Iowa Code chapter 8F

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

1.16.9 Amendments

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

1.16.10 Third Party Beneficiaries

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

1.16.11 Use of Third Parties

The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Agency in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Agency reserves the right to review and approve all subcontracts. The contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

1.16.12 Choice of Law and Forum

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

1.16.13 Assignment and Delegation

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

1.16.14 Integration

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

1.16.15 Headings or Captions

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

1.16.16 Not a Joint Venture

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

1.16.17 Joint and Several Liability

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

1.16.18 Supersedes Former Contracts or Agreements

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

1.16.19 Waiver

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

1.16.20 Notice

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

specified on the forms. Each such notice shall be deemed to have been provided:

1.16.20.1 At the time it is actually received; or,

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

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

1.16.21 Cumulative Rights

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

1.16.22 Severability

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

1.16.23 Time is of the Essence

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

1.16.24 Authorization

Contractor represents and warrants that:

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

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

1.16.25 Successors in Interest

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

1.16.26 Records Retention and Access

The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues

which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract 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:

- 1.16.26.1** Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.
- 1.16.26.2** The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- 1.16.26.3** The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Agency.
- 1.16.26.4** The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.
- 1.16.26.5** The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

1.16.27 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 Agency if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. If an audit report is not required to be submitted per

the criteria above, the subrecipient must provide written notification to the Agency 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 Agency. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. Contractor shall provide the Agency 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.

1.16.28 Qualifications of Staff

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

1.16.29 Solicitation

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

1.16.30 Obligations Beyond Contract Term

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

1.16.31 Counterparts

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

1.16.32 Delays or Impossibility of Performance

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

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

1.16.33 Suspensions and Debarment

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

1.16.34 Conflict of Interest

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

1.16.35 Certification Regarding Sales and Use Tax

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

1.16.36 Right to Address the Board of Directors or Other Managing Entity

The Agency reserves the right to address the Contractor’s board of directors or other

managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Agency determines appropriateness.

1.16.37 Repayment Obligation

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

1.16.38 Further Assurances and Corrective Instruments

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

1.16.39 Reporting Requirements

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

1.16.40 Immunity from Liability

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

1.16.41 Public Records

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

1.16.42 Use of Name or Intellectual Property

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

1.16.43 Taxes

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables. [State of Iowa Tax Exempt Letter](#)

1.16.44 No Minimums Guaranteed

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