

Attachment #3
Section 1
General Terms and Conditions

1.1 Definitions

The following words shall be defined as set forth below:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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 thirty (30) days or such later time as may be 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
- 1.6.2.6** Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- 1.6.2.7** 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;
- 1.6.2.8** 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;
- 1.6.2.9** 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;
- 1.6.2.10** Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or

1.6.2.11 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:

1.6.2.11.1 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;

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

1.6.2.11.3 Making an assignment for the benefit of creditors;

1.6.2.11.4 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

1.6.2.11.5 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 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:

1.6.3.1 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

1.6.3.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as

determined by the Agency in its sole discretion; or

1.6.3.3 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

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

1.6.3.5 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 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.

1.6.4 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:

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

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

1.6.4.3 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;

1.6.4.4 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;

1.6.4.5 Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

1.6.5 Contractor's Termination Duties

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

1.6.5.1 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.

- 1.6.5.2** Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.
- 1.6.5.3** 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.
- 1.6.5.4** Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor.
- 1.6.5.5** Immediately deliver to the Agency any and all Deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

1.6.6 Termination for Cause by Contractor

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

1.7 Confidential Information

1.7.1 Access to Confidential Information

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

1.7.2 No Dissemination of Confidential information

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

information.

1.7.3 Subpoena

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

1.7.4 Reporting of Unauthorized Disclosure

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

1.7.5

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

1.7.6 Survives Termination

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

1.8 Indemnification

1.8.1 By the Contractor

The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of Contractor's performance of this Contract, to the extent the same are caused by:

1.8.1.1 Any breach of this Contract;

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

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

1.8.1.4 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or

misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

1.8.2 Survives Termination.

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

1.9 Insurance

1.9.1 Insurance Requirements

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

1.9.2 Types and Amounts of Insurance Required

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

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

1.9.3 Certificates of Coverage

Contractor shall maintain all insurance policies required by this Contract in full force

and effect during the entire term of this Contract and any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the Agency. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. The insurer shall state in the certificate that notice of cancellation of the insurance will be made in accordance with the policy provisions. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

1.9.4 Waiver of Subrogation Rights

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

1.10 Project Management & Reporting

1.10.1 Project Manager

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

1.10.2 Review Meetings

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

1.10.3 Reports

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

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

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

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

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

1.10.4 Problem Reporting Omissions

The Agency's acceptance of a problem report shall not relieve the Contractor of any

obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Agency may have. The Agency's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance or damages under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

1.10.5 Change Order Procedure

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

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

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

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

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

1.11 Legislative Changes

The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold the Agency liable in any manner for the resulting changes. The Agency shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. If the parties cannot agree on a change, either party may terminate this Agreement by providing no less than ninety (90) days' notice to the other party. Nothing in this Subsection shall affect or impair the Agency's right to terminate the Contract pursuant to the termination provisions.

1.12 Intellectual Property

1.12.1 Intellectual Property Rights

This Contract does not convey to the Agency or Contractor any ownership rights, title or interest, in the intellectual property owned or licensed by the other, unless agreed upon by the parties in writing. The technology or know-how used to provide the Deliverables developed or licensed by Contractor prior to the execution of this Contract, including without limitation, the Iron Mountain Connect, SafeKeeperPLUS, or SecureBase inventory management systems accessible through the internet, shall be the exclusive property of Contractor or its licensors. Any goods, services, documents, records, programs, data, articles, memoranda, and other materials not developed or

licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Agency.

1.12.2 Agency's Right to Use

This Agreement constitutes only a right to use or access Contractor's intellectual property if included as party of a Deliverable ordered as part of this Contract. If access to or use of Contractor software is provided hereunder, Contractor hereby grants Agency and State a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use the software solely for the Agency's and State's internal purposes in conjunction with the Services provided by Contractor during the term of the Contract.

1.13 Warranties

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

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

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

Contractor represents and warrants that: (1) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (2) the Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the

Agency's request and at the Contractor's sole expense: (1) procure for the Agency the right or license to continue to use the Deliverable at issue; (2) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (3) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (4) accept the return of the Deliverable at issue and refund to the Agency all fees, charges and any other amounts paid by the Agency with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

1.13.3 Contractor represents and warrants that the Deliverables (in whole and in part) shall:

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

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

1.13.5 Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and

ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board, the Iowa Department of Administrative Services, and Iowa Office of the Chief Information Officer.

1.13.6 Obligations Owed to Third Parties

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

1.14 Acceptance Testing.

1.14.1 The Agency shall have thirty (30) days after the performance of the Deliverables to perform an inspection of the Deliverables to determine whether the Deliverables conform to the standards and Specifications set forth in the RFB and this Contract prior to acceptance of the Deliverables by the Agency.

1.14.2 If Contractor delivers nonconforming Deliverables, the Agency may, at its option and at Contractor's expense: (i) return the Deliverables for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Deliverables subject to the terms of this Contract; or (iii) obtain replacement Deliverables from another source, subject to Contractor being responsible for any cover costs.

1.15 Contract Administration

1.15.1 Independent Contractor

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

1.15.2 Incorporation of Documents

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

1.15.3 Intent of References to Bid Documents

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

Contractor's Bid Proposal. The contractual obligations of the Agency cannot be implied from the Bid Proposal.

1.15.4 Compliance with the Law; Nondiscrimination in Employment.

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

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

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

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

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

1.15.5 Procurement

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

1.15.6 Non-Exclusive Rights

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

1.15.7 Non-Supplanting Requirement

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

1.15.8 Compliance with Iowa Code chapter 8F

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

1.15.9 Amendments

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

1.15.10 Third Party Beneficiaries

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

1.15.11 Use of Third Parties

The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract, including Dakota Data Shred, Inc. Except for any performance obligations subcontracted to an affiliate of Contractor (which may include Iron Mountain Information Management, LLC or Iron Mountain Information Management Services, Inc.), 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 subcontractors not identified in this Section 1.15.11. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

1.15.12 Choice of Law and Forum

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

1.15.13 Assignment and Delegation

Contractor may not assign, transfer or convey in whole or in part this Contract without

the prior written consent of the Agency. Except as provided in Section 1.15.11, 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. In the event Contractor transfers a controlling interest to a suspended or debarred Contractor, the Agency or State shall have the right to terminate this Contract effective immediately without advance notice.

1.15.14 Integration

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

1.15.15 Headings or Captions

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

1.15.16 Not a Joint Venture

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

1.15.17 Joint and Several Liability

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

1.15.18 Supersedes Former Contracts or Agreements

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

1.15.19 Waiver

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

1.15.20 Notice

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

1.15.20.1 At the time it is actually received; or,

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

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

1.15.21 Cumulative Rights

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

1.15.22 Severability

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

1.15.23 Time is of the Essence

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

1.15.24 Authorization

Contractor represents and warrants that:

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

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

1.15.25 Successors in Interest

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

1.15.26 Records Retention and Access

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

representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures.

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

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

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

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

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

1.15.27 Audits or Examination of Records

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

summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.

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

1.15.28 Qualifications of Staff

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

1.15.29 Solicitation

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

1.15.30 Obligations Beyond Contract Term

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

1.15.31 Counterparts

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

1.15.32 Delays or Impossibility of Performance

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

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

1.15.33 Suspensions and Debarment

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

1.15.34 Conflict of Interest

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

1.15.35 Certification Regarding Sales and Use Tax

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

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

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

1.15.37 Repayment Obligation

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

1.15.38 Further Assurances and Corrective Instruments

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

1.15.39 Reporting Requirements

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

1.15.40 Immunity from Liability

Every person who is a party to the Contract is hereby notified and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract, except to the extent provided in the Iowa Tort Claims Act (Iowa Code Chapter 669).

1.15.41 Public Records

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

1.15.42 Use of Name or Intellectual Property

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

1.15.43 Taxes

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

1.15.44 No Minimums Guaranteed

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

1.15.45 Safe Materials

The Agency and State shall not place in any shredding bins any material that is highly flammable, may attract vermin or insects, or is otherwise dangerous or unsafe to store or handle, or any material that is regulated by any federal or state regulation

relating to the environment or hazardous materials.

Section 2
IRS Publication 1075 Additional Information

2.1 Destruction Methods

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

Shredding – Destroy paper using cross cut shredders which produce particles that are .04 inches by .02 inches in size, or smaller, or pulverize/disintegrate paper materials using disintegrator devices equipped with a 3/32 inch security screen. If shredding deviates from the above specification, FTI must be safeguarded until it reaches the stage where it is rendered unreadable through additional means, such as burning or pulping.

2.2 Performance

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

2.2.1 All work will be performed under the supervision of the contractor or the contractor's responsible employees.

2.2.2 The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

2.2.3 Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

2.2.4 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

2.2.5 No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

2.2.6 The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

2.2.7 The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

2.3 Criminal/Civil Sanctions

2.3.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and

employee Publication 1075 (September 2016) Page 142 Safeguarding Contract Language Exhibit 7 that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- 2.3.2** Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return 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 shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 2.3.3** Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 2.3.4** Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and Publication 1075 (September 2016) Page 143 Safeguarding Contract Language Exhibit 7 annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

2.4 Inspection

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices

and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

Section 3
Iowa Department of Revenue
Confidential Information Requirements for Contractors

3.1 Access to Confidential Data

The contractor's employees, agents, and subcontractors may have access to confidential data maintained by the Iowa Department of Revenue (hereafter referred to as 'IDR' or 'the Department') 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.

3.2 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:

3.2.1 All work will be done under the supervision of the contractor or the contractor's employees. 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.

The contractor shall provide adequate supervision and training to its employees, agents, or subcontractors to ensure compliance with the terms of the Contract. Annual training shall include, but is not limited to, the IRS video "Protecting Tax Information".

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).

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.

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 IDR and, when federal tax information (FTI) is involved, to the Internal Revenue Service (IRS) reviewing office upon request.

The contractor and the contractor's employees, agents, and subcontractors with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

No work furnished under this Contract will be subcontracted without prior written approval from the Department, except to an affiliate of Contractor as provided in Section 1.15.11. If written approval is received, all subcontractors and subcontractor's employees shall be held to the same standards as the contractor and the contractor's employees, including, but not limited to, annual training and acceptance of confidentiality disclosure.

No data can be accessed by contractor, or contractor's employees, agents, and subcontractors located offshore or via any information systems located off-shore.

The contractor will complete a security risk assessment questionnaire annually, as part of a certification process with the Department.

- 3.2.2** 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 authorized officer, employee, agent or subcontractor of the contractor is prohibited.
- 3.2.3** 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.
- 3.2.4** Upon completion of duties under this Contract or the specific direction of IDR, 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 certify that any tax information remaining in any storage component will be safeguarded to prevent unauthorized disclosures until it has been purged. Once all data processed and output generated has been completely purged, the contractor shall submit a signed certification to the Department to that effect.
- 3.2.5** Any spoilage or intermediate hardcopy 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 spoilage or intermediate hard copy printouts, 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.
- 3.2.6** 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.
- 3.2.7** The use of personally owned computers for accessing IDR information is strictly prohibited.
- 3.2.8** Any data supplied by IDR to the contractor or contractor's employees, agents, or subcontractors or created by the contractor or contractor's employees, agents, or subcontractors in the course of the performance of its duties under this Contract shall be considered the property of IDR. No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by the contractor or contractor's employees, agents, or subcontractors 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.
- 3.2.9** 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 IDR and cooperate with the Department in any lawful effort to protect the confidential information.

Notwithstanding the foregoing, if the subpoena or other legal process is issued under seal by a court of competent jurisdiction and the Contractor is ordered by the court not to disclose the issuance of the subpoena or other legal process, Contractor will notify Agency as soon as permitted by the court.

- 3.2.10** The contractor shall immediately upon discovery report to IDR any unauthorized disclosure or security breach of 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, and (iv) Compromise or denial of confidential information or information systems.
- 3.2.11** The IRS, with 24 hour notice, shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. An inspection questionnaire may be used in lieu of an on-site visit at the discretion of the IRS. On the basis of such inspection, specific actions may be required of the contractor in cases where the contractor is found to be noncompliant with Contract safeguards.
- 3.2.12** If the Department is required to notify taxpayers of a security or confidentiality breach caused by the contractor, the Department is entitled to reimbursement of such costs related to this notification from the contractor (see Iowa Code § 715C.2).
- 3.2.13** If the contractor fails to provide the safeguards described above, IDR will have the right to void the Contract immediately.
- 3.2.14** The contractor's confidentiality obligations under this section shall survive the termination of this Contract.
- 3.2.15** Any disclosure of federal tax information shall be subject to penalties prescribed by IRC §§ 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 Ann., §§ 422.20, 422.72, and 452A.63, shall be subject to penalties prescribed therein.

3.3 Criminal/Civil Sanctions

- 3.3.1** Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Each officer and employee shall be further notified that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC §§7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 3.3.2** Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing that any return or return information made available in

any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by any unauthorized person constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Each such officer and employee shall be notified that any such unauthorized inspection of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection plus in the case of a willful inspection which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC §§ 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- 3.3.3** Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 3.3.4** Granting a contractor access to FTI must be preceded by certifying that each individual understands IDR's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in IDR's files for review. As part of the certification and at least annually afterwards, the contractor shall be advised of the provisions of IRC §§7213, 7213A, and 7431. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See Publication 1075 Section 10). For both the initial certification and the annual certification, the contractor's employees, agents, and subcontractors shall sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

Acknowledgment of Statement of Confidentiality

Release of Confidential Internal Revenue Service (IRS) Information

Pursuant to the agreement between the State of Iowa and the IRS, I realize that information provided the Iowa Department of Revenue by the Department of Treasury is confidential in nature. I am also aware that the following is punishable:

- 1) The willful inspection (browsing) of information without authorization, or
- 2) The willful release of such information to persons other than that intended by Iowa Department of Revenue policy and procedures.

A person committing an offense of willful inspection without authorization of federal information against the provisions of Section 7213 A of the Internal Revenue Code shall be guilty of a federal misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year, or both, together with the cost of prosecution.

A person committing an offense of unauthorized disclosure of federal information against the provisions of Sections 6103 and 7213(a) of the Internal Revenue Code shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than five years, or both, together with the cost of prosecution. In addition, a person may be subject to civil action by the taxpayer for unlawful inspection or disclosure pursuant to section 7431 of the Internal Revenue Code.

EB

Employee's Initials

Release of Confidential Iowa Department of Revenue Information

Pursuant to the Code of Iowa, I understand the willful release of confidential information in a manner inconsistent with Iowa law is punishable as set forth below. I also understand that the willful inspection (browsing) of tax records is a violation of Iowa law. A person committing an offense against the above provisions shall be guilty of a serious misdemeanor and, upon conviction thereof, shall be fined up to \$1,000 and/or imprisoned up to one year. In addition, that person will be discharged from employment and may face the potential of personal liability in a lawsuit brought by the affected taxpayer.

EB

Employee's Initials

My understanding of these obligations is acknowledged by my initials above and my signature here.

Ed Bass

Print Name

Ed Bass

Signature

4-17-2020

Date

Iron Mountain

IDR Division / Company Name

Section 4
Iowa Department of Human Services
Business Associate Agreement

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

4.1 Purpose

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

4.2 Definitions

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

Specific definitions:

4.2.1 “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 C.F.R. § 160.103, and in reference to the party to this BAA, shall mean the Contractor.

4.2.2 “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this BAA shall mean the portions of the Agency, which is a “hybrid” entity under HIPAA, that fall under the purview of HIPAA.

4.2.3 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

4.3 Obligations and Activities of Business Associate

The Business Associate agrees to:

4.3.1 Not Use or Disclose Protected Health Information other than as permitted or required by this BAA or as Required By Law;

4.3.2 Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this BAA;

4.3.3 Report to the Covered Entity any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware in accordance with subsection 7, below;

4.3.4 In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health

Information on behalf of the Business Associate agree to restrictions, conditions, and requirements at least as stringent as those that apply to the Business Associate with respect to such information;

- 4.3.5** Make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 C.F.R. §164.524 in accordance with the terms and conditions of the Underlying Agreement;
- 4.3.6** Perform such service (such as retrieving PHI designated by Covered Entity) so that Covered Entity may make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. §164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 C.F.R. § 164.526, in each case in accordance with the terms and conditions of the Underlying Agreement;
- 4.3.7** Maintain and promptly make available, as directed by the Covered Entity, the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy the Cover Entity's obligations under 45 C.F.R. § 164.528;
- 4.3.8** Immediately (i.e., within 72 hours) forward any request that the Business Associate receives directly from an Individual who (1) seeks access to Protected Health Information held by the Business Associate pursuant to this BAA, (2) requests amendment of Protected Health Information held by the Business Associate pursuant to this BAA, or (3) requests an accounting of Disclosures, so that the Covered Entity can coordinate the response;
- 4.3.9** To the extent the Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- 4.3.10** Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

4.4 Permitted Uses and Disclosures by the Business Associate

- 4.4.1** The Business Associate may Use or Disclose Protected Health Information received in relation to the Underlying Agreement as necessary to perform the services set forth in the Underlying Agreement.
- 4.4.2** The Business Associate is not authorized to de-identify Protected Health Information in accordance with 45 C.F.R. § 164.514(a)-(c) unless expressly authorized to do so in writing by the Covered Entity's Security and Privacy Officer.
- 4.4.3** The Business Associate agrees to make Uses and Disclosures and Requests for Protected Health Information consistent with the Covered Entity's Minimum Necessary policies and procedures to the extent the same have been provided to Business Associate. Notwithstanding the foregoing, the parties agree that because of the nature of the services provided in the Underlying Agreement, Business Associate is unable to independently determine what constitutes the Minimum Necessary and will rely on Covered Entity's direction.
- 4.4.4** The Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity.

4.4.5 The Business Associate may Use or Disclose the Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to who the information is Disclosed that the information will remain confidential and used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been Breached.

4.5 Obligations of the Covered Entity

4.5.1 The Covered Entity will notify the Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect the Business Associate's Use or Disclosure of Protected Health Information.

4.5.2 The Covered Entity will notify the Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect the Business Associate's Use or Disclosure of Protected Health Information.

4.5.3 The Covered Entity shall notify the Business Associate of any restriction on the Use or Disclosure of Protected Health Information that the Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect the Business Associate's Use or Disclosure of Protected Health Information.

4.6 Permissible Requests by the Covered Entity

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

4.7 Breach Notification Obligations of the Business Associate

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

4.7.1 To notify the Covered Entity of any Breach. Such notice by the Business Associate shall be provided without unreasonable delay, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of this BAA, the Business Associate is deemed to have discovered the Breach as of the first day on which such Breach is known to the Business Associate or by exercising reasonable diligence, would have been known to the Business Associate, including any person, other than the Individual committing the Breach, that is a workforce member or agent of the Business Associate;

4.7.2 To include to the extent possible the identification of the Individuals whose Unsecured Protected Health Information has been, or is reasonably believed to have been, the subject of a Breach;

4.7.3 To provide reasonable assistance and cooperation in the investigation of any such Breach

4.8 BAA Administration

4.8.1 Term and Termination

This BAA is effective on the date of its incorporation into the Underlying Agreement. The Covered Entity may terminate this BAA for cause if the Covered Entity determines that the Business Associate or any of its Subcontractors or agents has breached a material term of this BAA. The Covered Entity will provide written notice to the Business Associate requesting that the Business Associate remedy the breach within the time frame provided in the notice. The remedy time frame provided the Business Associate will be consistent with the severity of the breach. The Covered Entity reserves the right to terminate the BAA without notice in the event that the Covered Entity determines, in its sole discretion, that notice is either infeasible or inappropriate under the circumstances. Expiration or termination of either the Underlying Agreement or this BAA shall constitute expiration or termination of the corresponding agreement.

4.8.2 Obligation to Return PHI, Destroy PHI, or Extend Protections to Retained PHI

Upon expiration or termination of this BAA for any reason, the Business Associate shall return to the Covered Entity or destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by the Business Associate on behalf of the Covered Entity, that the Business Associate still maintains in any form. Return or destruction of Protected Health Information shall take place in accordance with the requirements for such return or destruction as set forth in the Underlying Agreement. The Business Associate shall retain no copies of the Protected Health Information unless such return or destruction is not feasible. If return or destruction of the Protected Health Information is not feasible, upon expiration or termination of this BAA, the Business Associate shall:

- 4.8.2.1** Retain only that Protected Health Information that is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities to the extent Required By Law;
- 4.8.2.2** Return to the Covered Entity or destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
- 4.8.2.3** Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as the Business Associate retains the Protected Health Information;
- 4.8.2.4** Not Use or Disclose the Protected Health Information retained by the Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out in subsection 4(e) above under "Permitted Uses and Disclosures by the Business Associate" which applied prior to termination; and
- 4.8.2.5** Return to the Covered Entity or destroy the Protected Health Information retained by the Business Associate when it is no longer needed by the Business Associate for its proper management and administration or to carry out its legal responsibilities.

4.8.3 Compliance with Confidentiality Laws

The Business Associate acknowledges that it must comply with all applicable laws that may protect the Protected Health Information or other patient information received and will comply with all such laws, which include but are not limited to the following:

- 4.8.3.1** Medicaid applicants and recipients: 42 U.S.C. § 1396a(a)(7); 42 C.F.R. §§431.300 - .307; Iowa Code § 217.30;
- 4.8.3.2** Mental health treatment: Iowa Code chapters 228, 229;
- 4.8.3.3** HIV/AIDS diagnosis and treatment: Iowa Code § 141A.9;
- 4.8.3.4** Substance abuse treatment: 42 U.S.C. § 290dd-2; 42 C.F.R. part 2; Iowa Code §§ 125.37, 125.93.v.Consumer personal information: Iowa Code ch. 715C.

4.8.4 Financial Obligations for Breach Notification

4.8.4.1 To the extent that the Business Associate is a governmental agency subject to the provisions of Iowa Code § 679A.19, any dispute between the Contractor and the Agency, including but not limited to the incursion of any costs, liabilities, damages, or penalties related to the Business Associate's breach of this BAA, shall be submitted to a board of arbitration in accordance with Iowa Code §679A.19.

4.8.4.2 To the extent that the Business Associate is not subject to the provisions of Iowa Code § 679A.19, the Business Associate shall defend, indemnify, and hold harmless the Covered Entity from costs, liabilities, damages, or penalties incurred as a result of any enforcement proceeding commenced by the Secretary of Health and Human Services or any civil action brought by a state Attorney General against Covered Entity, to the extent such proceeding or action results directly and solely from any act or omission by the Business Associate or any Subcontractor which is a breach of this BAA, or conduct of the Business Associate or the Business Associate's Subcontractor that is not in compliance with 45 C.F.R. Part 164, subpart E. Such liability shall not attach to disclosures made at the express written direction of the Covered Entity. Notwithstanding anything to the contrary, Business Associate's obligations shall not apply to the extent any such costs, liabilities, damages, or penalties are caused by Covered Entity's breach of this BAA, the Underlying Agreement, or conduct of the Covered Entity that is not in compliance with the HIPAA Rules.

4.8.4.3 The Business Associate's obligations under this subsection 8(d) are not limited to third-party claims but shall also apply to claims by the Covered Entity against the Business Associate.

4.8.5 Amendment

Any agreed alteration of this BAA shall have no force or effect until the agreed alteration is reduced to a Contract amendment and signed by the Contractor, Agency Director, and the Agency Security and Privacy Officer.

4.8.6 Survival

All obligations of the Agency and the Business Associate incurred or existing under this BAA as of the date of expiration or termination will survive the expiration or termination of this BAA.

4.8.7 No Third Party Beneficiaries

There are no third party beneficiaries to this BAA between the parties. The Underlying Agreement and this BAA are intended to only benefit the parties to the BAA.

4.8.8 Miscellaneous

4.8.8.1 Regulatory References

A reference in this BAA to a section in the HIPAA Rules means the section as it may be amended from time to time.

4.8.8.2 Interpretation

Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.

4.8.8.3 Applicable Law

Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the same internal laws as that of the Underlying Agreement.

Section 5

Confidentiality Acknowledgements

The Contractor shall acknowledge by signature, acceptance by its employees, agents, or subcontractors of the terms of federal and state confidentiality disclosure provisions in Internal Revenue Service Confidential Information Safeguarding Provisions, Confidential Information Safeguarding Provisions and Acknowledgement of Statement of Confidentiality.

Internal Revenue Service Confidential Information Safeguarding Provisions

5.1 Performance

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

- 5.1.1** All work will be performed under the supervision of the contractor or the contractor's responsible employees.
- 5.1.2** The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- 5.1.3** Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
- 5.1.4** All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- 5.1.5** No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.
- 5.1.6** The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- 5.1.7** The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.
- 5.1.8** (Include any additional safeguards that may be appropriate.)

5.2 Criminal/Civil Sanctions

- 5.2.1** Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not

less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- 5.2.2** Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return 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 shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 5.2.3** Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 5.2.4** Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

5.3 Inspection

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

transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

Confidential Information Safeguarding Provisions

Definition of Confidential Information. The term “Confidential Information” shall include, but not be limited to, the following:

- All individual case information received pursuant to this Contract unless otherwise designated by the Bureau,
- An individual’s social security number,
- An individual’s residential and mailing addresses,
- An individual’s employment information, and
- An individual’s financial information.

Prohibitions against the Use and Disclosure of Confidential Information. The Contractor shall not use, handle, transmit, store, or destroy the Confidential Information of applicants or recipients of child support enforcement services in a manner or for any purpose, except as allowed by the provisions of the Contract. The Contractor shall safeguard the confidentiality of Confidential Information concerning applicants or recipients of child support enforcement services according to 5 U.S.C. § 552a; 26 U.S.C.

§ 6103; 42 U.S.C. §§ 654 and 654a; Iowa Code § 252B.9; Iowa Code Chapter 715C; 45 CFR Parts 303.21 and 307.13; and other applicable federal and state laws.

Internal Revenue Service Data. The Contractor shall adhere to the safeguarding provisions of *Internal Revenue Service Publication 1075*. **Exhibit F** contains a summary of the Contractor’s Confidential Information safeguarding requirements and penalties pertaining to Internal Revenue Service information.

Reporting. The Contractor shall report to the Bureau’s Security and Privacy Officer and the Child Support Recovery Unit any use or disclosure of the Confidential Information not provided for by this Contract of which the Contractor becomes aware, as well as report any suspected or unauthorized access to or disclosure of Confidential Information. The Contractor agrees to report suspected or unauthorized access to or disclosure of Confidential Information immediately, as the Bureau is required to report the suspected or unauthorized access or disclosure within the following timeframes:

- Federal Tax Information24 hours
- Social Security Information1 hour
- Federal Parent Locator Service1 hour
- All other Confidential Information3 Business Days

Sanctions. State and federal statutes carry criminal penalty or civil liability for confidentiality violation. For example, see Iowa Code § 252B.10; 5 U.S.C. § 552a; 42 U.S.C. §§ 653(l)(2) and 654a(d)(5); and 26 U.S.C. §§ 7213A and 7431. The Contractor may not use the Confidential Information for commercial or political purposes or re-disclose the Confidential Information without the express, written consent of the Bureau. The Contractor may be held civilly or criminally liable for misuse of the Confidential Information.

Survival. The provisions of the Contract that protect Confidential Information shall survive termination of the Contract.

Acknowledgement of Statement of Confidentiality

I understand all information received under this contract is confidential unless otherwise designated by the Agency. I further understand I am bound by state and federal confidentiality law that prohibits disclosure of state and federal data and program information. For example, see Iowa Code section 252B.9 and 252B.9A. Some of these statutes carry criminal penalty or civil liability for statute violation. For example, see Iowa Code section 252B.10, 42 U.S.C. §653(l)(2) and 654a(d)(5), and 5 U.S.C. § 552a.

I realize that information provided to the Department of Human Services by the Internal Revenue Service is confidential in nature. I am also aware the following is punishable:

- 1) The willful inspection (browsing) of information without authorization, or
- 2) The willful release of such information to persons other than that intended by the Iowa Department of Human Services policy and procedures.

I understand unauthorized inspection of federal tax information to anyone against the provisions of Section 7213A and 7431 of the Internal Revenue Code is a criminal misdemeanor punishable, upon conviction, by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. I further understand that any such unauthorized inspection I am found to be responsible for may also result in a money judgment against me in an amount equal to the sum of the greater of \$1,000 for each unauthorized inspection or the amount of the actual damages to the taxpayer.

I understand unauthorized willful disclosure of federal tax information to anyone against the provisions of Section 7213 and 7431 of the Internal Revenue Code is a felony punishable if convicted by a fine up to \$5,000 or imprisonment up to five (5) years, or both, plus the cost of prosecution. I further understand that any such unauthorized future disclosure of federal tax information may also result in a money judgment against me in an amount not less than \$1,000 for each unauthorized disclosure.

I also understand that under 5 U.S.C. § 552a, The Privacy Act of 1974, willful disclosure of SSA information can result in a misdemeanor and a fine not to exceed \$5,000. Willful maintenance of a system of records can result in a misdemeanor and fine not to exceed \$5,000. Willfully and knowingly requesting or obtaining records under false pretenses can result in a misdemeanor and fine not to exceed \$5,000.

I have read and understand this Acknowledgement of Statement of Confidentiality Information and have had an opportunity to ask my supervisor questions about this information.

Printed Name Ed Bass	Company Name Iron Mountain
Signature <i>Ed Bass</i>	Date 4-17-2020