

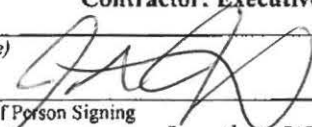
State of Iowa Office of the Chief Information Officer

Contracts Declaration & Execution Page


Title of Contract: EIS – SAS Remote Managed Services		GSA Schedule Number GS-35F-0170K	OCIO Contract Number 2016-BUS-005
This Contract is entered into between the State of Iowa (by and through its agency, the Office of the Chief Information Officer) and the Contractor named below:			
State Agency's Name: Office of the Chief Information Officer			
Contractor's Name: Executive Information Systems, LLC			
Contract to Begin: 5/31/2017	Date of Expiration: 5/30/2020	Annual Extensions: 7	
<p>Except as otherwise stated in the Services Contract, the parties agree to comply with the terms and conditions of the following documents listed in order of preference (should there be an inconsistency or conflict between the documents):</p> <ul style="list-style-type: none"> • Services Contract • Statement of Work—Exhibit A • GSA schedule—Exhibit B • Master Software License Agreement—Exhibit C • State Accounting Policy and Procedures 210.245, 210.305, and 210.306—Exhibit D • Quotations 			

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

Contractor: Executive Information Systems, LLC

By (Authorized Signature) 	Date Signed 6/2/17
Printed Name and Title of Person Signing Jonathan Ward, Contracts Manager	
Address 6901 Rockledge Drive, Suite 600 Bethesda, MD 20817	

State of Iowa: Iowa Office of the Chief Information Officer

By (Authorized Signature) 	Date Signed 5/31/2017
Printed Name and Title of Person Signing VON WOLFFRADT / CIO	
Address Iowa Office of the Chief Information Officer 1305 E. Walnut St. Hoover Bldg. – Level B Des Moines, IA 50319	

Services Contract

This Contract for professional services and other deliverables, is made and effective as of the date of last signature on the Contracts Declarations and Execution Page ("**Effective Date**"), by and between the State of Iowa, acting by and through the Office of the Chief Information Officer (the "**Department**" or "**OCIO**") and Executive Information Systems, LLC, a corporation organized under the laws of Maryland (the "**Contractor**"); each individually a "**Party**" and collectively the "**Parties**". The Parties enter into this Contract pursuant to authority granted to the OCIO pursuant to Iowa Code Chapter 8B.24. This authority authorizes the OCIO to enter into agreements for the purchase of information technology where the contract price, terms, and conditions are no less favorable than the Contractor's current federal supply contract. Applicable to and specifically for purposes of this agreement, Contractor's current GSA contract number is GS-35F-0170K, the current version of which may, at the date of the signing of this Contract, be found at <http://www.execinfosys.com/EIS%20GSA%20Terms.pdf> (if this Hyperlink changes Contractor will provide us with the most up to date version within five (5) days of such change).

A. PURPOSE AND TERMS

1. **Purpose.** The Parties have entered into this Contract for the purpose of retaining Contractor to provide various information technology services related to the installation, configuration, management, and maintenance of certain SAS Institute Inc. Software. In the event of a conflict between the terms and conditions in this Contract and a SOW, Exhibit, Schedule, or any other like attachment, the Contract will prevail. The rights and obligations of the State of Iowa may be, in whole or in part, exercised or fulfilled by any Governmental Entity. Governmental Entities may execute Statements of Work under this Agreement. Each Statement of Work shall be deemed, upon its execution, to incorporate the terms and conditions of this Agreement and shall constitute a separate, distinct and independent contract between Vendor and such Governmental Entity and the Governmental Entity shall be solely responsible for any obligations or payments due or owed under the Statement of Work and Contract. As a result, if the context so requires, as used in this agreement the term "Department" shall be deemed to mean the applicable Governmental Entity making a purchase pursuant to a Statement of Work under this Agreement. The rights and obligations of any Governmental Entity under such separate, distinct and independent contract may be, in whole or in part, exercised or fulfilled by the State of Iowa and its other Governmental Entities.

2. **Term.** The initial term of this Contract is for three years, beginning from the date of last signature on the Contract Declarations and Executions page, unless terminated earlier in accordance with the terms of this Contract. After expiration of the initial term, the Department shall have the option to extend/renew this Contract for up to seven (7) additional one-year renewal terms. The decision to extend the Contract will be at the sole option of the Department and may be exercised by the Department by providing thirty (30) days written notice to Contractor. Any Services being performed pursuant to an SOW at the time the Contract expires, shall continue to be governed by the terms of the SOW and this Contract

B. DEFINITIONS AND GENERAL INFORMATION

The following words shall be defined as set forth below:

1. "**Acceptance**" means that the Department has determined that one or more Deliverables satisfy the Department's Acceptance Tests. Final Acceptance means that all Deliverables to be provided under a

Statement of Work satisfy the Department's Acceptance Tests. Non-acceptance means that the Department has determined that one or more Deliverables have not satisfied the Department's Acceptance Tests.

2. **"Acceptance Criteria"** means the Specifications against which the Deliverables may be evaluated for purposes of Acceptance or Non-Acceptance thereof.

3. **"Acceptance Tests" or "Acceptance Testing"** mean the tests, reviews and other activities that are performed by or on behalf of Department to determine whether the Deliverables meet the Acceptance Criteria.

4. **"Authorized Persons"** means the Contractor's employees, contractors, subcontractors or other agents who need to access the State's personal data to enable the Contractor to perform the services required.

5. **"Breach of security" or "Security Breach"** shall be as defined: 1) in Iowa Code section 715C.1, as may be amended from time to time, or any successor provision thereof; or 2) as defined by any other applicable law, as amended, and corresponding implementing regulations related thereto.

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

7. **"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, and all other attachments to the Contract Declarations and Executions Page(s).

8. **"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.

9. **"Deliverables"** means all of the goods, products, services, Work Product, materials and tangible or intangible items that Contractor agrees to create, produce, provide, or deliver under a Statement of Work. Deliverables includes, but is not limited to, training or knowledge share, Documentation, or other items as described in a SOW.

10. **"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.

11. **"Governmental Entity"** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4), or any successor provision to that section, excluding entities of the federal government. The term Governmental Entity shall include Iowa agencies, independent agencies, departments, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining

boards, offices of elective constitutional or statutory officers, and other units or entities of government. Nothing herein shall prevent a Governmental Entity from procuring services using federal funds.

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

13. **"Personal Data"** means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.

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

15. **"Software"** means software licensed by Contractor to a Governmental Entity pursuant to the Master Software License Agreement, to be separately executed and deemed attached and incorporated herein as **Exhibit C** upon execution, or other software license agreement as specified in the applicable Statement of Work.

16. **"Special Contract Attachments"** means any attachment to this Contract indicated on the Contract Declarations & Execution Page(s).

17. **"Specifications"** means all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Contract, a SOW, and the Documentation. 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.

18. **"State"** means the State of Iowa, the Department, 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.

19. **"State Data"** means all data created or in any way originating with the State or applicable Governmental Entity, irrespective of where such data is stored or hosted.

20. **"State Identified Contact"** means the Office of the Chief Information Officer's Chief Information Security Officer (CISO).

21. **"Statement of Work" or "SOW"** means the initial Statement of Work, and any additional Statement of Work attached to, and set forth in an **Exhibit A** to this Contract. Statements of Work must be mutually agreed to and executed by the Parties to this Contract in order to be considered binding under the

terms of this Contract. Each Statement of Work will describe the Deliverables, if any, Software, and services to be provided by Contractor. Each Statement of Work attached hereto is incorporated into this Contract by this reference as if fully set forth in this Contract. As otherwise permitted by this Agreement, Statements of Work may also have additional exhibits, schedules, addendum, or other like attachments attached that may contain additional terms applicable to particular project.

22. **"Work Product"** means computer code, Documentation, including but not limited to any intellectual property contained in or associated therewith, such as copyrights, patents, trademarks, and or trade secrets, created, developed, produced, and/or provided to the Department by Contractor under a SOW.

C. Duration of Contract. Reserved.

D. Scope of Work and Scope of Agreement.

Statement(s) of Work. Contractor shall provide the services and Deliverables, if any, to the Department and Governmental Entities in accordance with the Statement(s) of Work and all other terms and conditions of this Contract, including but not limited to all applicable Specifications, including those contained in any Documentation. The services and Deliverables, including any applicable assumptions, dependencies, or Department responsibilities will be described in the applicable SOW. In no event will Contractor have any obligation to provide technical support or maintenance or any migration or upgrade services for any Work Product, Deliverables or State Data unless such activities are specifically set forth in the applicable SOW or a separate agreement. Any description of the services or Deliverables set forth in a proposal or other sales or pre-sales communication will be for general descriptive purposes only and will not be deemed to be incorporated by reference into the applicable SOW, unless specifically referenced in or incorporated into the applicable SOW.

1. The Department, any applicable Governmental Entities to which the services or Deliverables are provided through the Department, or either of the foregoing's Authorized Persons may modify the Deliverables, including the Work Product. In the event any party other than Contractor modifies the Work Product, the warranties and indemnities set forth in the Contract will not apply to any such modified Work Product. Use of any such modified Work Product will be subject to the same restrictions applicable to the Work Product set forth in this Contract or in the applicable SOW.

2. **Amendments to Statement(s) of Work.** The Parties agree that any Statement of Work may be amended, modified, or replaced at any time during the term of this Contract upon the mutual written consent of the Parties. Such amendments shall be executed in accordance with Section K.5 Change Order Procedure, *infra*.

E. Compensation

1. **Certification of Accuracy.** The Contractor represents, warrants, and covenants that the Contractor's prices under this contract shall not exceed the prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule Program. The Contractor further represents, warrants, and covenants that the above will apply and be true with respect to all future pricing information submitted to revise this Contract.

2. **Pricing.** Subject to the terms of this Contract, in consideration of Contractor providing the

Department or Governmental Entities with Deliverables in accordance with the terms and conditions of the SOW and this Contract, Contractor shall be entitled to receive the fees or other compensation associated with such Deliverables as specified in a Statement of Work, to the extent such fees are consistent with and do not exceed the fees listed under the applicable GSA Schedule. Contractor shall bear the burden of demonstrating to the Department or applicable Governmental Entity such fees do not exceed the fees listed under the applicable GSA Schedule. Contractor shall notify the State of any GSA Schedule pricing changes approved by GSA. The State will receive the most current GSA pricing when placing a purchase under this agreement. Subject to the foregoing and other applicable provisions in this Contract related to payment, acceptance, invoicing and other similar terms, Contractor may invoice the Department or applicable Governmental Entity on a fixed price or time and materials basis for services or Deliverables as set forth in the applicable SOW. Under a Time and Materials model, Contractor will perform services directed towards a particular goal, as described in the applicable SOW, at the rate(s) set forth in the SOW. A time and materials model shall mean a consultative model under which (a) SAS provides services at the hourly rates identified in the GSA Schedule and (b) SAS' time and a license consistent with the terms of this Contract to any Work Product resulting from the services, which shall constitute Deliverables under this Contract. Using a fixed price model, Contractor may also provide Deliverables to the Department whereby Contractor provides specifically defined Deliverables, as described in the applicable SOW, for a set fee quoted in advance of provisioning the Deliverables; provided, Contractor shall be responsible for providing the Department with documentation demonstrating that the quoted, fixed price did not exceed the fee that would have been charged had Contractor provided the Deliverables under the applicable GSA Schedule (including any fees associated with applicable Software provided by Contractor pursuant to the Master Software License Agreement, attached as **Exhibit C** (separately executed and deemed attached and incorporated herein as upon execution), or other software license agreement as specified in the applicable Statement of Work). For the avoidance of doubt, in the case of a fixed-price arrangement, the Department shall not be responsible for and shall be entitled to a refund of any fees invoiced or paid excess of the fees consistent with applicable GSA pricing.

3. Travel Expenses. Contractor represents that it is authorized pursuant to its GSA contract to charge the federal government for lodging and travel expenses in addition to any services it provides the federal government. Only to the extent it is authorized to do so, and subject to any applicable State laws, rules, policies and procedures, the Department or applicable Governmental Entity shall reimburse Contractor for the reasonable and actual costs of transportation, meals and lodging incurred by Contractor with respect to travel incurred by Contractor in providing services to the Department; provided, however that: (i) all such costs have been submitted by Contractor and approved by the Department or applicable Governmental Entity in advance of any such travel; and (ii) notwithstanding any such approval by the Department or applicable Governmental Entity, any reimbursement for allowable transportation, meals and lodging shall not exceed the maximum reimbursement rates applicable to board, commission, advisory council and task force members, including, without limitation, those set forth in the State Accounting Policy and Procedures Manual 210.245, 210.305, and 210.306 (or any successor provisions), attached hereto as **Exhibit D** or such other rates as may later be established by state laws, rules, policies or procedures. Contractor agrees to utilize the most economical and reasonable mode of transportation available and shall comply with any other travel policies, procedures or requirements applicable to contractors of the State. Contractor shall submit a copy and itemized receipts and any other supporting documentation as may be requested by the Department or applicable Governmental Entity with respect to all costs and expenses submitted by Contractor for reimbursement. The Department or its designee reserves the right to audit all reimbursement requests and to withhold or deny reimbursement for Contractor's failure to comply with the requirements of this section and the travel policies of the State. Except for the foregoing, there shall be no other

reimbursable expenses associated with this Contract, and Contractor shall be solely responsible for all other costs, charges and expenses it incurs in connection with its performance under this Contract, including, but not limited to, equipment, supplies, personnel, salaries, benefits, insurance, training, taxes, conferences, telephone, utilities, start-up costs, and all other operational and administrative costs and expenses of Contractor.

4. Invoices / Payment Terms. Consistent with the acceptance provisions provided for in this Contract, and pursuant to the applicable payment schedule identified in a Statement of Work, Contractor shall submit an invoice to the Department or applicable Governmental Entity requesting payment of the fees or other compensation specified in the Statement of Work associated with such Deliverables. All invoices submitted by Contractor shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Department or applicable Governmental Entity. Except for payments identified as prepayment agreed to by the State for Deliverables, including but not limited to Software licensed by a Governmental Entity pursuant to a separate software license agreement, the Department or applicable Governmental Entities shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code r. 41.1(2). The Department or applicable Governmental Entities may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Department shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Department believes the invoice is inaccurate or incorrect in any way.

5. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Department may withhold compensation or payments to Contractor, in whole or in part, without penalty to the Department or work stoppage by Contractor, in the event the Department determines that: (i) Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications, or contains or is experiencing a Deficiency caused by the contractor. No interest shall accrue or be paid to Contractor on any compensation or other amounts withheld or retained by the Department under this Contract.

6. 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: (i) any sum invoiced by, or owed to, Contractor under this Contract, or (ii) 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.

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

Period End
June 30

Fee Due
July 31

September 30
December 31
March 31

October 31
January 31
April 30

F. Limitations of Liability. The maximum liability of the Parties under this Contract shall be one times the Contract Value (Contract Value is defined as the aggregate total compensation paid by the State to the Contractor for a specific project under the Contract, including all renewals and extensions); further neither Party shall be liable for special, incidental, indirect, consequential, or punitive damages; provided, however, that under no circumstances shall the foregoing limitations or any provisions providing for sole and exclusive remedies (including but not limited to any such provisions included in this Agreement, an SOW, any Exhibit or other document attached hereto, any license agreement for Software, including the Master Software License Agreement, or any other document related to this Agreement) apply to:

- i. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence of Contractor, its officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors,
- ii. Claims related to death, bodily injury, or damage to real or personal property,
- iii. Any contractual obligations of the Contractor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, confidential information.
- iv. Claims arising under provisions of the Contract calling for indemnification of the State for third-party claims against the State for bodily injury to persons or for damage to real or tangible personal property caused by the Contractor's negligence or willful conduct.
- v. **Either Party's violation of the other Party's intellectual property rights.**

Nothing in this Agreement, including Section F, shall: (i) prevent the State from challenging the enforceability or validity of this Section F or any provision providing for sole and exclusive remedies; or (ii) be construed to waive any clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on recovery provided by law to the state or any agency, department or official of the State.

G. Termination.

1. Immediate Termination by the State. The State may terminate this Contract, or the applicable Governmental Entity may terminate the applicable Statement of Work, for any of the following reasons effective immediately without advance notice:

- i. 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;
- ii. 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;

iii. The Contractor fails to comply with confidentiality laws or provisions;

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

2. **Termination for Cause by the Department.** The Department may terminate this Contract, or the applicable Governmental Entity may terminate the applicable Statement of Work, upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Department's or applicable Governmental Entity's notice of breach or any subsequent notice or correspondence delivered by the Department or applicable Governmental Entity to Contractor, which period shall not be less than thirty (30) days, provided that cure is feasible. In addition, the Department may terminate this Contract, or the applicable Governmental Entity may terminate the applicable Statement of Work, effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

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

ii. 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;

iii. Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;

iv. Contractor terminates or suspends its business;

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

vi. Contractor has failed to comply in any material respect 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 ("**Applicable Laws**"); provided, however, that any noncompliance with Applicable Laws that does not materially affect the delivery of Deliverables or services under this Agreement or result in any fine or other action against Contractor shall not be grounds for termination;

vii. The Department, or the applicable Governmental Entity, determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Department or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;

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

ix. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy, in connection with the Deliverables; or

x. 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:

a. 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;

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

c. Making an assignment for the benefit of creditors;

d. 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

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

f. Contractor's underlying GSA contract is terminated or otherwise expires., provided that, if Contractor is awarded a successor GSA contract, such Contract may continue to serve as the basis for the continuation of this Contract.

3. Termination upon Notice. Following thirty (30) days written notice, the Department may terminate this Contract, or the applicable Governmental Entity may terminate the applicable Statement of Work, in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all.

4. 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 Department shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

- i. The legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
- ii. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or
- iii. If the Department'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
- iv. If the Department's duties, programs or responsibilities are modified or materially altered; or
- v. 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 Department's ability to fulfill any of its obligations under this Contract. The Department shall provide Contractor with written notice of termination pursuant to this section.

5. Limitation of the State's Payment Obligations. In the event of termination of this Contract for any reason by either party, the Department shall pay only those amounts, if any, due and owing to Contractor hereunder for Deliverables actually and satisfactorily performed up to and including the date of termination of this Contract and for which the Department is obligated to pay pursuant to this Contract; provided however, that in the event the Department terminates this Contract pursuant to Section G.4, the Department'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 G.5 in no way limits the rights or remedies available to the Department and shall not be construed to require the Department to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Department in accordance with the terms of this Contract. The Department shall not be liable, under any circumstances, for any of the following:

- i. The payment of unemployment compensation to Contractor's employees;
- ii. The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- iii. Any costs incurred by Contractor in its performance of the Contract, other than reasonable travel and lodging expenses consistent with the terms of this Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- iv. 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;
- v. Any excise, income, payroll, sales, and property taxes Contractor may owe in connection with the performance of this Contract.

6. Contractor's Termination Duties. Upon receipt of notice of termination or upon request of the Department, Contractor shall:

- i. 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 Department may require.
- ii. Immediately cease using and return to the Department any property or materials, whether tangible or intangible, provided by the Department to Contractor.
- iii. Cooperate in good faith with the Department and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement Contractor (the "Transition Period"); provided that all work performed during the Transition Period is performed pursuant to an SOW governed by the terms of this Contract during such Transition period and the Department is current on payments to the Contractor. Notwithstanding the foregoing, in the event the Contractor hosts State Data pursuant to a separate data-hosting agreement, any transition provision contained therein shall govern such transition.
- iv. Immediately return to the Department any payments made by the Department for Deliverables that were not rendered or provided by Contractor.
- vi. Immediately deliver to the Department any and all Deliverables for which the Department has made payment 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.
- vii. Nothing in this section G.6 shall transfer ownership of Work Product.

7. State Data upon Termination and/or Suspension of Service:

- i. In the event of a termination or expiration of the Contract, to the extent Contractor has any State Data in its possession, Contractor shall implement an orderly return of State Data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of State Data.
- ii. During any period of service suspension, Contractor shall not take any action to erase any State Data.
- iii. In the event of termination or expiration of any SOW or this Contract in its entirety, Contractor shall not take any action to intentionally erase any State Data for a period of:
 - 30 days after the effective date of termination or expiration, if the termination or expiration is for any reason other than for cause;
 - 60 days after the effective date of termination, if the termination is for cause

After such period, Contractor shall have no obligation to maintain or provide any State Data and shall thereafter, unless legally prohibited, delete all State Data in its systems or otherwise in its possession or

under its control.

iv. The State shall be entitled to any post-termination assistance in connection with the return of the State Data, generally made available with respect to the services.

v. The Contractor shall securely dispose of all State Data in a mutually agreeable manner.

8. Termination for Cause by Contractor. Contractor may terminate this Contract for the breach by the Department of any material term, condition or provision of this Contract, if such breach is not cured within thirty (30) days of the Department's receipt of Contractor's written notice of breach.

H. Confidential Information.

1. Access to Confidential Information. The Contractor's employees, agents and subcontractors may have access to State Data to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all State Data is confidential unless otherwise designated by the Department or such data falls within subsection (2) below. 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 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 each SOW. 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 Department at all times.

2. No Dissemination of Confidential information. No State Data 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 Department, either during the period of the Contract or thereafter. Contractor may share such State Data with its approved affiliates and subcontractors only to the extent necessary for the provisioning of services and Deliverables under the Contract. Any State Data supplied by the Department to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Department or the applicable Governmental Entity. The Contractor must return any and all State 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 Department or applicable Governmental Entity. Contractor may be held civilly or criminally liable for improper disclosure of State Data. For purposes of this section H, State Data does not include information that is: (a) generally available to the public; (b) identified by the Department as non-confidential; (c) independently developed or acquired by Contractor; (d) known to the Contractor prior to receipt from the Department; or (e) has been revealed pursuant to court order or as required by applicable law. Contractor's obligations of confidentiality hereunder with respect to each item of Discloser's Confidential Information will continue for a period of five (5) years from the date of initial disclosure. As it relates to paragraph (e), above: prior to disclosing any State Data pursuant to a court order, Contractor shall promptly notify the Department or applicable Governmental Entity and cooperate with the Department or applicable Governmental Entity in any lawful effort to protect the State Data; prior to disclosing any information pursuant to applicable law, Contractor shall make reasonable efforts notify the Department of the obligation, provide a citation to the applicable law, and cooperate with the Department in any lawful effort to protect the State Data.

3. **Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information. Department will authorize payment for Contractor expenses occurred at the mutual agreement of both Parties, and as allowed by State law.

4. **Confidential Tax Information.** Contractor may have access to highly confidential information, such as confidential tax information, as specified in a Statement of Work, and shall execute any mutually agreeable ancillary agreements, such as the one in Appendix A of Exhibit A, as may be required to access such confidential information or other sensitive information in connection with the applicable Statement of Work. To the extent any terms therein are more stringent in favor of the State or an applicable Governmental Entity, any specific terms related to confidentiality or the security of State Data set forth in such ancillary agreement shall supersede the corresponding terms of this Contract.

5. **Survives Termination.** The Contractor's obligations under this section and any ancillary agreements executed between Contractor and the applicable Government Entity shall survive termination or expiration of this Contract.

I. Indemnification

1. **By the Contractor.** Provided the State complies with this Section, Contractor will indemnify and hold harmless the State and any applicable Governmental Entity and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "**Indemnified Parties**"), from any costs and attorneys' fees the State incurs and any judgment finally awarded against the State with respect to any third party claims made against the Indemnified Parties for:

- (a) copyright, patent, trade secret or other intellectual property rights violations relating to the Work Product (provided the Department uses the Work Product consistent with the terms and conditions of the Agreement and complies with this Section I.1), or Deliverables; or
- (b) bodily injury, death or damage to tangible property for which Contractor is legally responsible, including intentional or willful misconduct, but excluding loss of or damage to software or data; provided such obligation shall apply only to the extent caused by Contractor or its subcontractors, agents, or other third parties working on Contractor's behalf.
- (c) Any intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- (d) 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.

If such claim in (a) above is made or, in Contractor's opinion, is likely to be made, then Contractor, at its option, may: (1) modify the Work Product or Deliverables; (2) obtain rights for the Department or applicable Governmental Entity to continue using the Work Product or Deliverables consistent with the rights granted or transferred hereunder; or (3) should options (1) or (2) not be possible at reasonable expense, terminate the license for the Work Product or Deliverables at issue and refund the fees paid for such Work Product or Deliverables, but in no event will termination relieve Contractor from its

obligation to indemnify and hold harmless the State or applicable Governmental Entity as set forth herein (1-3 above shall be collectively referred to herein as "Fixes"). To the extent consistent with the framework established above, the Department agrees to abide by Contractor's decision and, if appropriate, install a different version of the Work Product or stop using the Work Product; provided, however, that Contractor shall further indemnify and hold harmless the State to the extent any Fix does not fully resolve the issues and the State incurs additional costs related to any claim under (a). This indemnification obligation does not apply to the extent a claim is based on: (i) the Department's or applicable Governmental Entity's combination of the Work Product with unauthorized software or materials as specified in writing by Contractor or (ii) any other modification made to the Work Product by the Department, its Authorized Persons or its representatives. As it relates to any claims in (a), the State, in defending itself, will cooperate with Contractor in defending Contractor's intellectual property rights in any Work Product or Deliverables related to such claims brought against the State; provided, however, Contractor shall not request the State admit liability or fault in any related action, interfere with any defenses uniquely available to the State, such as those related sovereign immunity, or interfere with the State in any attempts to settle such claims made against the State.

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 Department or any other Indemnified Party.

J. Insurance.

1. Insurance Requirements. The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by or authorized to do business in 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 insure against loss or damage resulting from or related to the Contractor's performance of this Contract. If any policy is written on a claims-made form, the coverage shall continue for not less than one (1) year following termination or expiration of this agreement, or the Contractor shall purchase a minimum of one (1) year tail coverage. The State of Iowa and the Department shall be included as additional insureds on the General Liability policy.

2. Types and Amounts of Insurance Required. The Contractor shall cause to be issued insurance coverages insuring the Contractor against general liabilities, product liability, personal injury, property damage, and professional liability in the amounts specified below. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 million
	Products –	
	Comp/Op Aggregate	\$1 Million
	Personal injury	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million

Type of Insurance	Limit	Amount
Errors and Omissions Insurance	Each Occurrence	\$1 Million
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law

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. At the request of the Department, the Contractor shall submit certificates of the insurance, which indicate coverage as required by this Contract. The certificates shall be subject to approval by the Department. Approval of the insurance certificates by the Department shall not relieve the Contractor of any obligation under this Contract.

4. **Waiver of Subrogation Rights.** Except for Errors and Omissions Insurance, the Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

K. Project Management & Reporting.

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

2. **Review Meetings.** During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of the Statement of Work. 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.

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:

- i. Any event not within the control of the Contractor or the Department that accounts for the problem;
- ii. [RESERVED];

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

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

4. Problem Reporting Omissions. The Department'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 Department may have. The Department'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.

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

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

ii. **The Contractor's Response.** The Contractor shall submit to the Department a firm cost proposal for the requested change order within ten (10) business days of receiving the change order request.

iii. **Acceptance of the Contractor Estimate.** If the Department accepts the cost proposal presented by the Contractor, the parties shall enter into a mutually agreeable amendment to the applicable Statement of Work. .

iv. **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.

L. Legislative Changes.

Should any legislative body enact measures which alter the project, the Contractor shall not hold the Department or applicable Governmental Entity liable in any manner for the resulting changes. The Department or applicable Governmental Entity 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. Such changes shall be set forth in a mutually agreeable amendment. Nothing in this Subsection shall affect or impair the Department's right to terminate the Contract pursuant to the termination provisions.

M. Intellectual Property.

1. Ownership and Assignment of Deliverables. State acknowledges and agrees that except for software owned by third parties, all software, source and object code including, without limitation, databases, documentation, specifications, manuals, instructions and other data and materials created by Contractor in connection with the Contract including all future domestic and foreign patents, copyrights

and trade secrets related thereto are and shall remain exclusively owned by Contractor. Contractor hereby grants the Department or the applicable Governmental Entity executing the Statement of Work non-exclusive, non-assignable, non-transferable (except to other Governmental Entities upon Contractor's agreement), royalty-free, fully-paid up license to use the Work Product and Deliverables subject to the following. Customer may use the Work Product only with the Software to which such Work Product relates and only for as long as Customer maintains a license for such Software. Additionally, Customer's use of the Work Product must be consistent with the scope of Customer's Software license. However, if the Work Product are not computer code or documentation relating to a particular Software license (by way of example, and not by way of limitation, a report delivered as a result of a proof of concept Service), Customer's use of such Work Product is limited to Customer's internal business purposes. Ownership of the Work Product, including any intellectual property embodied therein, and any techniques, skills, concepts or know-how that are utilized or developed while performing the Services remains with EIS.

2. **Waiver.** [RESERVED].

3. **Further Assurances.** [RESERVED].

N. Warranties.

1. **Contractor represents and warrants that:** (i) it has all necessary rights to license the Work Product and Deliverables to the Department; (ii) it 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 Department herein; (iii) (a) the Work Product and Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Work Product or Deliverables); and (b) the Department'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 Work Product or 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; (iv) 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 Work Product or Deliverables. The Department's sole remedy for breach of these warranties is set forth in Section I, subject to the qualifications and carve outs set forth in Section F.

2. **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. The sole and exclusive warranty law remedy for breach of this warranty is refund of fees paid for the Deliverables at issue, subject to the qualifications and carve outs set forth in Section F.

3. **Contractor represents and warrants** that it will comply in all material respects with all Applicable Laws in its performance of this Agreement; provided, however, that any noncompliance with Applicable Laws that does not materially affect the delivery of Deliverables under this Agreement or result in any fine or other action against the Department shall not be deemed a breach of this representation and warranty. The sole and exclusive warranty law remedy for breach of this warranty is refund of fees paid for the Deliverables at issue, subject to the qualifications and carve outs set forth in Section F.

4. EXCEPT AS OTHERWISE SPECIFIED IN THE CONTRACT, THE PARTIES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONTRACTOR DOES NOT WARRANT OR REPRESENT THAT USE OF ANY WORK PRODUCT WILL RESULT IN COMPLIANCE, FULFILLMENT OR CONFORMITY WITH THE LAWS, RULES, REGULATIONS, REQUIREMENTS OR GUIDELINES OF ANY GOVERNMENTAL AGENCY.

O. Acceptance Testing.

Except as otherwise specified a Statement of Work which may provide for alternative acceptance procedures, all Deliverables shall be subject to the Department's Acceptance Testing and Acceptance as provided in this Section O, except for those Deliverables provided on a time and materials basis. Upon completion of all work to be performed by Contractor with respect to any Deliverable, Contractor shall deliver a written notice to the Department certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Department to accept; provided, however, that Contractor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Department. At the Department's request, Contractor shall provide reasonable assistance to the Department in performing Acceptance Tests at no additional cost to the Department if stated in the Statement of Work and at the Department's request. Within a reasonable period of time, but no longer than fifteen (15) days, after the Department has completed its Acceptance Testing, the Department shall provide Contractor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. The Department will not unreasonably withhold, delay or condition Acceptance. If the Department determines that a Deliverable satisfies its Acceptance Tests, the Department shall provide Contractor with notice of Acceptance with respect to such Deliverable, at which time Contractor may invoice the Department for such Deliverable. If the Department determines that a Deliverable fails to satisfy its Acceptance Tests, the Department shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the Department provides notice of Non-acceptance to Contractor with respect to any Deliverable, the parties will cooperate to review and attempt to resolve any outstanding disputes or problems with the Deliverables, including if necessary ensuring escalation of the issue in question to the appropriate levels of each party's senior management. In the event that management of both parties who have decision-making authority regarding the dispute fail to reach a good faith resolution, Contractor may terminate the SOW and refund the fees paid for all Work Product Customer returns to Contractor. Nothing herein shall prevent the State from seeking any other available remedies at law, in equity, or otherwise.

P. Contract Administration.

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 Department, 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 Department or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Department will not withhold taxes on behalf of the

Contractor (unless required by law).

2. **[RESERVED].**

3. **Non-Exclusive Rights.** This Contract is not exclusive. The Department reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the term of this Contract.

4. **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.

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

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

7. **Use of Third Parties.** The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Department in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Department reserves the right to review and approve all subcontractors. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. Contractor shall oversee each subcontractor's compliance with such requirements and shall be fully and financially responsible to the State of Iowa for any failure of a subcontractor to meet such requirements. 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 Department shall have the right to request the removal of a subcontractor from the Contract for good cause. The Department acknowledges that EIS will subcontract the Services to SAS Institute Inc. The State of Iowa's consent to any subcontract or subcontractor shall not be deemed in any way to provide for the incurrence of any additional obligation of the State of Iowa, whether financial or otherwise. Any subcontract that the State of Iowa has consented to shall be in writing and shall in no way alter the terms and conditions of this Agreement. Contractor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. In addition, the State of Iowa is not responsible for any failure of any subcontractor to pay any amounts that may be due to Contractor and Contractor may not refuse to perform its obligations under this Agreement for any such failure. If Contractor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to Contractor or any subcontractor by any person in connection with the Services provided under this Agreement, the State of Iowa may (but is not obligated to) pay such claim and charge the amount of the payment against funds due or to become due Contractor under this Agreement. The payment of a claim in the manner authorized in this paragraph shall not relieve Contractor or its surety from any obligation with respect to any unpaid claims. Any action of a subcontractor that if done by Contractor would constitute a breach of this Agreement shall be deemed a breach by Contractor and have the same legal effect.

8. **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 Department or the State of Iowa.

9. **Assignment and Delegation.** Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Department. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Department. 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.

10. **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.

11. **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.

12. **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.

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

14. **Supersedes Former Contracts or Agreements.** This Contract supersedes all prior contracts or agreements between the Department and the Contractor for the Deliverables to be provided in connection with this Contract.

15. **Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Department 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.

16. **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:

- i. At the time it is actually received; or,
- ii. Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
- iii. 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.

17. 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.

18. 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.

19. 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 are responsive to the Department's requirements and requests in all respects.

20. Authorization. Contractor represents and warrants that:

- i. It has the right, power and authority to enter into and perform its obligations under this Contract.
- ii. 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. The sole and exclusive warranty law remedy for breach of this warranty is refund of fees paid for the Deliverables at issue, subject to the qualifications and carve outs set forth in Section F.

21. 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.

22. 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 Department 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 Department, 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.

23. Audits.

i. [RESERVED].

24. Ancillary Agreements from Use of Federal Funds. In the event a Governmental Entity expends federal funds in connection with this Contract, Contractor shall execute any mutually agreeable ancillary agreements, such as the one in Appendix B of Exhibit A, which may contain additional requirements necessary for the Governmental Entity to expend federal funds hereunder. To the extent the terms therein are more stringent in favor of the State or an applicable Governmental Entity, such terms shall supersede the corresponding terms of this Contract.

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

26. 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.

27. 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 and transition duties of the Department 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.

28. 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.

29. 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 is not reasonably foreseeable or which if reasonably foreseeable, is not subject to the reasonable control of the party affected. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the reasonable 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 reasonable commercial efforts to directly provide alternate, and to the extent possible, comparable performance. 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.

30. 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 Department or Department. 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.

31. Conflict of Interest. Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Department 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 Department, the Department may terminate this Contract, and the Contractor shall be liable for any excess costs to the Department as a result of the conflict of interest, subject to the limitation of liability herein. 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 Department.

32. 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(42) & (43). The Contractor also acknowledges that the Department may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Department or its representative filing for damages for breach of contract.

33. Right to Address the Board of Directors or Other Managing Entity. The Department 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 Department determines appropriateness.

34. 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 Department for the full amount of any claim disallowed and for all related penalties incurred, subject to the limitation of liability herein, to the extent applicable. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

35. 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.

36. 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 Department 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.

37. Immunity from Liability. The parties agree that by entering into this agreement, the Department has in no way waived its sovereign immunity.

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

39. Use of Name or Intellectual Property. Contractor agrees it will not use the Department and/or State's name or any of their intellectual property, including but not limited to, any State, state Department, 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 Department and/or the State.

40. 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. Upon request, The State of Iowa Tax Exempt Letter will be provided.

41. No Minimums Guaranteed. The contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

42. Compliance to Iowa IT Policies and Standards. [Reserved]

43. Injunctive Relief. Breach of either party's intellectual property rights or confidentiality rights may lead to damages not adequately remedied by an award of money; therefore, the parties have the right to seek to protect these rights through temporary restraining orders or prohibitory injunctions which may be sought in any appropriate court, without the obligation of posting bond. The parties further agree that any such equitable relief will be without prejudice to any other rights accruing to them under the Contract.

44. Non-Solicitation. The Department agrees not to solicit for hire any individual who provides Deliverables under the Contract for a period of twelve (12) months after the completion of the Deliverables under the applicable SOW. Notwithstanding the foregoing, responses to general advertisements in the media or on the Internet or the Department's intranet will not be construed as solicitations for hire under this Section.

45. **Export.** Contractor hereby notifies the Department that because the Work Product is of United States origin, United States export laws and regulations apply to the Work Product. Both parties agree to comply with these and other applicable export and import laws and regulations.

46. **Non-discrimination/Equal Opportunity.** Contractor shall comply with all laws relating to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Contractor may be required to submit its affirmative action plan (containing goals and time specifications for achieving such goals) to the Iowa Department of Administrative Services to comply with the requirements of 11 Iowa Administrative Code 121; a breach of this requirement shall be considered a material breach.

Q. Additional Information Technology Terms and Conditions

1. **Data Ownership:** The Department or applicable Governmental Entity will be and remain the sole and exclusive owners of all State Data, computer code or software that the Department provides to Contractor or directs Contractor to obtain in connection with Contractor's performance of Deliverables under a particular SOW (the "**Department Materials**"). Department Materials will not be deemed to be Work Product even though they may be delivered with Work Product. The Department grants Contractor a nonexclusive, nontransferable, royalty-free right to use the Department Materials for the sole purpose of performing the Services under each applicable SOW. Ownership of the Department Materials, including any intellectual property embodied therein, remains with Department or applicable Governmental Entity or licensor. The Department or applicable Governmental Entity warrants that: (a) it has the right to grant to Contractor the right to use the Department Materials; and (b) Department's use of the Department Materials complies with all applicable license terms, terms of use and other usage terms as set forth by the providers of such materials.

The applicable Governmental Entity shall retain sole ownership over all State Data. The Data Custodian must approve all access to its data. The Contractor shall not access State user accounts or Department Materials, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract or (4) at the State's or applicable Governmental Entity's written request.

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

i. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of State Data. Such security measures shall be not less stringent than the measures the Contractor applies to its own personal data and non-public data of similar kind.

ii. [RESERVED].

iii. [RESERVED].

iv. At no time shall any State Data or processes — that either belong to or are intended for the use of a State or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.

v. The Contractor shall not use any State Data collected in connection with a particular SOW for any purpose other than fulfilling the services performed under that particular SOW.

3. Data Location: The Contractor shall provide its services to the State and its end users solely from data centers in the continental United States of America. Storage of State data at rest and all backups shall be located solely in data centers in the continental United States of America. The Contractor shall not allow its personnel or contractors to store State data on portable devices, including personal computers, except for devices that are used and kept only at its continental United States of America data centers. The Contractor shall permit its personnel and contractors to access State data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, however, the individual providing such technical user support may not have access to the State Data.

4. Security Incident or Security Breach Notification: The Contractor shall inform the State of any Security Incident or Security Breach.

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

ii. Security Incident Reporting Requirements: The Contractor shall report a Security Incident to the State Identified Contact within three (3) business days, or sooner if required by applicable law, to the extent the State identifies such law to Contractor in writing.

iii.[RESERVED].

5. Security Breach Responsibilities: This section only applies when a Security Breach occurs with respect to personal data within the possession or control of the Contractor.

i. The Contractor, unless stipulated otherwise, shall promptly notify the State Identified Contact within three (3) business days by telephone or email, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Security Breach. The Contractor shall (1) cooperate with the State as requested by the State to investigate and resolve the Security Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Security Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

ii. Unless otherwise stipulated, if a Security Breach is a direct result of the Contractor's breach of its contract obligation to prevent its release or disclosure, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Security Breach; (2) notifications to individuals, regulators or others required by Iowa Code 715C.2; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for Security Breaches in the United States (currently \$201 per record/person) in the most recent Cost of Security Breach Study: Global Analysis published by the Ponemon Institute at the time of the Security Breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

6. Background Checks: Contractor represents that it currently performs pre-employment drug and criminal background screening on every final applicant for employment at Contractor in accordance with SAS' human resources policy. Contractor may be required to agree to additional mutually agreeable background check requirements through an ancillary agreement, such as the one in Appendix A of Exhibit A, in connection with particular Statements of Work. To the extent any terms therein are more stringent in favor of the State or an applicable Governmental Entity, any specific terms related to background checks shall supersede the corresponding terms of this Contract.

7. Right to Remove Individuals: The State shall have the right at any time to require that the Contractor remove from interaction with State any Contractor representative who the State believes is detrimental to its working relationship with the Contractor. The State shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the contract or future work orders without the State's consent.

8. Compliance with Federal Tax Information Standards: The parties agree that no federal tax information (FTI) is being provided to EIS or its licensors hereunder. If the Department desires to provide FTI to the contractor or its licensors, the parties will enter into a mutually agreeable amendment hereto, or include provisions in the applicable SOW, specifying terms applicable to such FTI. To the extent applicable, in accordance with 26 USC § 6103(n) and in accordance with the provisions contained in 26 CFR 301.6103(n)-1, the Contractor shall comply with, and assume responsibility for compliance by Contractor personnel with the requirements set forth in this section.

8. Encryption of Data at Rest: [RESERVED].

EXHIBIT A
STATEMENT OF WORK

APPENDIX A

CONFIDENTIAL INFORMATION REQUIREMENTS FOR CONTRACTORS

I. Access to Confidential Information and Data

Executive Information Systems LLC (the "Contractor") will provide access to the confidential data of Department of Revenue (the "Department") solely to its authorized employees and subcontractors, and only to the extent necessary for Contractor to carry out its responsibilities under the Contract or SOW. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the Department. Contractor acknowledges and agrees that it is subject to the requirements and penalties of the confidentiality laws of the State of Iowa regarding tax information. See Iowa Code Section 421.17(23).

II. Performance

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

1) All work will be done by the Contractor's employees or authorized subcontractors.

- i) 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.
- ii) The Contractor shall provide adequate supervision and training to its employees, agents, or subcontractors to ensure compliance with the terms of the Contract.
- iii) Access to federal tax information ("FTI") by the Contractor
 - i) The Contractor potentially has access to FTI through its remote work in the Department's systems.
 - ii) Pursuant to Internal Revenue Service ("IRS") requirements, due to this potential for access to FTI, the Contractor shall provide acceptance by its employees and subcontractors who could access FTI, by signature, of the terms of federal confidentiality disclosure (see Exhibit 1 Acknowledgment of Statements of Confidentiality).
 - iii) Any unauthorized access or subsequent disclosure of FTI shall be subject to penalties prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
 - iv) In the event Contractor accesses FTI, Contractor shall provide such list of employees, agents or subcontractors with authorized access to the Department's data to the Internal Revenue Service (IRS) reviewing office upon request.
 - v) No FTI can be accessed by Contractor located off-shore or in any information systems located off-shore.
 - vi) The Contractor's computer systems connected to and accessing the Department's networks and systems that contain 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.
- iv) No Disclosure of FTI by the Department to Contractor
 - i) The parties agree that no federal tax information (FTI) is being provided to EIS or its licensors hereunder.
 - ii) If the Department desires to provide FTI to the Contractor or its licensors or subcontractors, the parties will enter into a mutually agreeable amendment hereto specifying terms applicable to such FTI, which terms may include penalties prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
 - iii) In addition, if the parties agree that the Contractor or its licensors or subcontractors will receive FTI hereunder, the Contractor shall provide acceptance by its employees, by signature, of the

terms of federal and state confidentiality disclosure (see Exhibit 1 Acknowledgment of Statements of Confidentiality).

- v) The Contractor shall provide acceptance by its employees, by signature, of the terms of state confidentiality disclosure (See Exhibit 1 Acknowledge of Statements of Confidentiality). Any disclosure of state tax information as governed by the Iowa Code, Sections 422.20, 422.72, and 452A.63, shall be subject to a fine of not less than \$100 or more than \$1,000 and/or be confined in jail for not less than thirty (30) days nor more than six (6) months.
 - vi) 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.
 - vii) The Contractor will maintain a list of employees, agents or subcontractors with authorized access to the Agency's data..
 - viii) **No work furnished under this Contract will be subcontracted by Contractor without prior written approval from the Department. The Department acknowledges that services will be subcontracted to SAS Institute Inc.**
- 2) Any tax information made available in any format shall be used solely for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of its duties under this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor or its subcontractors is prohibited.
- 3) [RESERVED].
- 4) [RESERVED].
- 5) [RESERVED].
- 6) [RESERVED].
- 7) Any data supplied by the Department to the Contractor in the course of the performance of its duties under this Contract shall be considered the property of the Department. No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by the Contractor except as authorized by law and only with the prior written consent of the Department, either during the period of the Contract or thereafter. The Contractor may be liable for an unauthorized disclosure if it fails to comply with federal and state confidential safeguard requirements.
- 8) The use of personally owned computers for accessing Department information is strictly prohibited, except the use of personally owned computers or other personally owned devices for accessing Department information through a Contractor-supplied virtual desktop infrastructure ("VDI") that requires two factor authentication prior to accessing Department information is allowed.
- 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 the Department and cooperate with the Department in any lawful effort to protect the confidential information.
- 10) The Contractor shall promptly report to the Department any unauthorized disclosure or security breach of confidential information provided by Agency to Contractor. These include, but are not limited to: (i) Unauthorized access or disclosure of confidential information; (ii) Illegal technology transfer; (iii) Sabotage, destruction, theft or loss of confidential information or the information systems, (iv) Compromise or denial of confidential information or information systems.

11) [RESERVED].

12) If the Department is required to notify taxpayers of a security or confidentiality breach caused by the Contractor, Contractor shall reimburse Agency for such costs related to this notification (see Iowa Code § 715C.2), as set out in paragraph five (5) of Section Q of the Contract.

13) If the Contractor fails to provide the safeguards described above, Agency will have the right to terminate the Contract immediately.

14) The Contractor's confidentiality obligations under this section shall survive the termination of this Contract.

III. Background Checks and Fingerprinting

(1) In accordance with IRS Pub. 1075 and Iowa Code section 421.48, any contractor, subcontractor, or other individual performing work for the Department is subject to a national criminal history check through the Federal Bureau of Investigation (FBI). The background check consists of the following:

- (i) FBI fingerprinting - a review of FBI fingerprint results conducted to identify possible suitability issues.
- (ii) Check of local law enforcement agencies where the individual has lived, worked, and/or attended school within the last 5 years, and if applicable of the appropriate agency for any identified arrests.
- (iii) Citizenship/residence - Contractor must be enrolled in E-Verify and complete a Form I-9 for each employee performing work for the Department.

(2) The Department will provide the fingerprints of the individual performing work for the Department to the Iowa Department of Public Safety.

(3) The individual will authorize release of the results of the national criminal history check to the Department.

(4) The Department will pay the actual cost of the fingerprinting and national criminal history check of the Contractor's employees performing work for the Department for purposes of carrying this Contract, if any.

APPENDIX A
EXHIBIT 1
ACKNOWLEDGMENT OF STATEMENT OF CONFIDENTIALITY
Release of Confidential Internal Revenue Service (IRS) Information

Pursuant to the Contract between the State of Iowa and the IRS, I realize that information provided to the Agency by IRS 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.

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.

Employee's Initials

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

Print Name

Signature

Date

APPENDIX B
SPECIAL TERMS APPLICABLE DUE TO USE OF FEDERAL FUNDS
Separately executed and deemed attached and incorporated herein upon execution

EXHIBIT B
GSA SCHEDULE

The price list and fees associated with GSA Schedule GS-35F-0170K as of 05/12/17 can be found at the following link: "<http://www.execinfosys.com/SAS%20GSA%20PriceList.pdf>". A copy of this .pdf in effect as of 05/12/17 has been created and located in the contracting file associated with this contract. The price list and fees are further memorialized in a document not attached herein titled "05-12-17 EIS SAS GSA PriceList." Contractor shall notify the State of any GSA Schedule pricing changes approved by GSA. The State will receive the most current GSA pricing when placing a purchase under this agreement.

EXHIBIT C

MASTER SOFTWARE LICENSE AGREEMENT

Separately executed and deemed attached and incorporated herein upon execution

EXHIBIT D

State Accounting Policy and Procedures 210.245, 210.305, and 210.306 can be found at the following links:

https://das.iowa.gov/sites/default/files/acct_sae/sae_manual/210/210-245.pdf

https://das.iowa.gov/sites/default/files/acct_sae/sae_manual/210/210-305.pdf

https://das.iowa.gov/sites/default/files/acct_sae/sae_manual/210/210-306.pdf