

State of Iowa Office of the Chief Information Officer

Contracts Declaration & Execution Page

Title of Contract: Sirius – IBM Goods & Services Agreement		RFP #OCIO17001	Contract Number 2017-BUS-718
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: Sirius Computer Solutions, Inc.			
Contract to Begin: As of the Date of Last Signature Below	Date of Expiration: March 14, 2019	Annual Extensions: Nine (9) optional extensions	
<u>Contract #2017-BUS-718 Additional Process Terms and Conditions</u>			
<p>When applicable, the State reserves the right to include in subsequent Purchasing Instruments the following additional documentation as provided in Contractor's bid. Subsequent documentation may include but is not limited to:</p> <ul style="list-style-type: none"> • The terms of any software licenses purchases provided in connection with any Goods or Services, pursuant to this RFP; • Cloud computing-specific terms and conditions which may vary depending on requirements associated with data, security, and other project-specific needs; • Lease terms; • Any other documentation required or otherwise determined to be in the best interests of the State. 			
<u>Incorporation of Documents</u>			
<p>By this reference the parties hereby acknowledge their acceptance of the General Terms and Conditions and any additional terms and conditions contained in the following Contract Attachments, which are hereby incorporated as though fully set forth herein:</p> <ul style="list-style-type: none"> • Attachment A: Products Terms and Conditions • Attachment B: Professional Services Terms and Conditions • Attachment C: Managed Services Terms and Conditions • Attachment D: RFP #OCIO17001 IBM Goods & Services • Attachment E: Sirius Response to RFP #OCIO17001 IBM Goods & Services 			

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: Sirius Computer Solutions, Inc.

DocuSigned by:	
By (Authorized Signature) <i>Bonnie M. Cerrito</i>	Date Signed 3/15/2018 18:04 CDT
Printed Name and Title of Person Signing Bonnie M. Cerrito - SVP-Contracts	
Address 10100 Reunion Pl., Suite 500, San Antonio, TX 78216	

State of Iowa: Iowa Office of the Chief Information Officer

<i>[Signature]</i>	
By (Authorized Signature) <i>Von Witznadt Director / CIO</i>	Date Signed 3/14/2018
Printed Name and Title of Person Signing	
Address Iowa Office of the Chief Information Officer 1305 E. Walnut St. Hoover Bldg. - Level B Des Moines, IA 50319	

State of Iowa Sirius-IBM Goods and Services Agreement General Terms and Conditions

1. Definitions

The following words shall be defined as set forth below:

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

“Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the State and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof as explicitly set forth in the applicable Purchasing Instrument.

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

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

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

“Contract” or **“Agreement”** means the collective documentation memorializing the terms of the agreement between the State and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s) and all other attachments to the Contract Declarations & Execution Page(s).

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

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

“Deliverables” means all of the services, work, work product, items, materials and property to be created, developed, or produced by Contractor or any agent, contractor or subcontractor of Contractor in connection with Professional Services performed by Contractor under this Contract. Notwithstanding the foregoing, Deliverables shall not include any Products or Goods acquired by the State from Contractor under this Contract.

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

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

“Managed Services” means the provision of day-to-day support and administration for a wide range of IT functions including, but not limited to, infrastructure administration services, application development services, cloud administration services, and IT business services. Managed Services may be distinguished from ordinary professional services by the assumption by Contractor of day-to-day managerial functions. For the sake of clarity, Managed Services does not include staff augmentation.

“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.

“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.

“Products” or “Goods” refers to any products, goods, materials or items that are ordered, delivered, installed, licensed, provided, or otherwise made available, under or through this Contract or Order (as hereinafter defined). The term “Product” includes all related, provided, or supplied Documentation, updates, source code, upgrades, and enhancements.

“Purchasing Instrument” means documentation agreed to in writing by the State and Contractor for the purchase of Deliverables, Products and/or services under this Agreement, including a Purchase Order or Statement of Work, and that identifies the Deliverables, Products and/or services to be purchased and any other requirements deemed necessary by the State, including any corresponding compensation and delivery dates. Each Purchasing Instrument is incorporated into this Agreement as if fully set forth herein upon execution. Notwithstanding the foregoing, any terms and conditions included on Contractor’s standard forms (other than a Statement of Work) or invoices shall be null and void.

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

“Security Incident” means the potentially 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.

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

“State” means the State of Iowa, the Office of the Chief Information Officer (“OCIO”), 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.

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

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

“Statement of Work” or “SOW” means the document setting forth the scope of Services (or Managed Services) to be performed, the project schedule, the associated rates, fees and other expenses and any other additional terms as may be agreed to by the parties for such Services (or Managed Services).

2. **Availability of Contract to Other Entities.** All other agencies of the State of Iowa and all political subdivisions of the State of Iowa may make purchases pursuant to the Contract.
3. **Pricing; Payment.** The State will pay the total purchase price for Products and/or Services as agreed to via any valid Purchasing Instrument. For purposes of this Contract, a Purchasing Instrument is only valid when executed in a writing by the duly authorized representatives of each party. With respect to the performance of Services, the State shall verify the Contractor’s performance of the Deliverables outlined in the invoice before making payment. The State shall pay all approved invoices within sixty (60) days of the receipt of invoice, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit or otherwise limit any remedy provided herein or by law for Contractor’s non-delivery of goods and/or services, the State’s non-acceptance of deliverables, or breach of contract.
4. **Limitations on Reimbursement Expenses.** Please reference Iowa Department of Administrative Services - State Accounting Enterprise Procedure 210-245 (accessible on the internet) for limits on travel expenses.
5. **Withholding Payments.**
 - a. In addition to pursuing any other remedy provided herein or by law, the State may withhold compensation or payments to Contractor, in whole or in part, without penalty to the State or work stoppage by Contractor, in the event the State determines that:
 - i. Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or,
 - ii. Any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency.
 - b. No interest shall accrue or be paid to Contractor on any compensation or other amounts withheld or retained by the State under this Contract.
6. **Setoff Against Sums Owed by 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: (a) any sum invoiced by, or owed to, Contractor under this Contract, or; (b) any sum or amount owed by the State to Contractor, unless otherwise required by law.
7. **Payment by Third Party Leasing Company.** If the State enters into a lease agreement with a third party leasing company (“Leasing Company”) encompassing the Product(s) or Services listed on an Purchase Order or Statement of Work to be fulfilled under this Agreement, the State may assign the rights to receive title to the Products or Services to such Leasing Company.
 - a. **Qualified Leasing Company.** For purposes of this Agreement, a Qualified Leasing Company (“QLC”) is IBM Global Financing (“IGF”) or any Leasing Company subsequently mutually agreed to in writing between the Parties. If the State assigns the rights to receive title to Products or Services to a QLC, and the QLC defaults on any payment or obligation owed to Contractor under this Agreement, the State shall not be held liable for the payments and/or obligations of the QLC.

- b. **Non-Qualified Leasing Company.** For purposes of this Agreement, any Leasing Company that is not a QLC is considered a Non-Qualified Leasing Company (“NQLC”). The State may assign the rights to receive title to Products and/or Services to a NQLC under this Agreement. However, if the State makes an assignment to an NQLC, such assignment shall not release the State from any liability or obligation under this Agreement or such Purchasing Instrument except to the extent such liability or obligation is completely fulfilled by the NQLC, and if the NQLC defaults on any such payment obligations owed to Contractor, the State will not be released and shall fulfill such obligations.

8. Termination.

- a. THIS SECTION IS INTENTIONALLY OMITTED.
- b. **Termination for Cause by the State.** The State may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within sixty (60) days following Contractor’s receipt of the State’s notice of breach or any subsequent notice or correspondence delivered by the State to Contractor, provided that cure is feasible. In addition, the State may terminate this Contract 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, the RFP 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 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;
 - vii. Contractor was required to be certified or licensed as a condition precedent to providing goods and services, and Contractor’s license or certification is subsequently revoked or otherwise lost;
 - viii. The State determines or believes the Contractor has engaged in conduct that: (a) has or may expose the State or the State to material liability, or (b) has caused or may cause a person’s life, health or safety to be jeopardized; or
 - ix. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy.
- c. **Termination upon Notice.** Except as otherwise set forth herein, following thirty (30) days written notice, the State may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all. Notwithstanding the foregoing, any and all Purchasing Instruments for Managed Services that are ongoing at the time of such termination shall remain in full force and effect for their respective initial terms and such Purchasing Instruments for Managed Services shall continue to be governed by this Contract during their respective initial terms, irrespective of such termination.
- d. **Termination of Managed Services.** Notwithstanding Section 9(c) herein, the State may not terminate a Purchasing Instrument during the initial term of such Purchasing Instrument, where the Purchasing Instrument to be terminated is for Managed Services. Notwithstanding the foregoing, nothing in this provision shall be construed to limit the State’s ability to terminate a Purchasing Instrument for Managed Services after the initial term pursuant to Section 9(c), or otherwise limit the State’s ability to terminate this Agreement or any non-Managed Services Purchasing Instrument pursuant to Sections 9(b), 9(c), or 9(e) of this Agreement.

- e. **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 State shall have the right to terminate this Contract without penalty and upon thirty (30) days' advance written notice, or any other such time as is practicable under the particular circumstances, as a result of any of the following:
- i. The legislature or governor fail in the sole opinion of the State to appropriate funds sufficient to allow the State to either meet its obligations under this 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 State to make any payment hereunder are insufficient or unavailable for any other reason as determined by the State in its sole discretion; or
 - iii. If the State'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 State'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 State's ability to fulfill any of its obligations under this Contract. The State shall provide Contractor with written notice of termination pursuant to this section.
- f. **Limitation of the State's Payment Obligations.** In the event of termination of this Contract for any reason by either party (except for termination by the State pursuant to Section 8.2), the State shall pay only those amounts, if any, due and owing to Contractor hereunder for Products ordered and Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the State is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section 8.5 in no way limits the rights or remedies available to the State and shall not be construed to require the State to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the State in accordance with the terms of this Contract. The State 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, 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 taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.
- g. **Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the State, 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 State may require;
 - ii. Immediately cease using and return to the State any property or materials, whether tangible or intangible, provided by the State to Contractor;
 - iii. Cooperate in good faith with the State and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider;
 - iv. Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor;

- v. Immediately deliver to the State any and all Deliverables for which the State has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

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

9. Confidential Information

- a. **Access to Confidential Information.** The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the State to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the State. The Contractor shall provide to the State a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential information shall remain the property of the State at all times.
- b. **No Dissemination of Confidential Information.** No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the State, either during the period of the Contract or thereafter. Any data supplied by the State to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the State. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.
- c. **Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the State and cooperate with the State in any lawful effort to protect the confidential information.
- d. **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the State any unauthorized disclosure of confidential information.
- e. **Survives Termination.** The Contractor's obligations under this section shall survive termination or expiration of this Contract.

- 10. **Independent Contractor; Non-Exclusivity.** Under this Agreement, Contractor shall be considered an independent contractor. This Agreement shall not be construed as creating a partnership, joint venture, agency or employment relationship, or as granting a franchise or other relationship under either federal or state law. This Agreement shall not preclude Contractor from selling Products and/or providing Services or any other products or services to others (including, without limitation, competitors of the State), which may result in, among other things, computer programming techniques, products and documentation that are competitive, whether or not such materials are similar to materials developed by Contractor pursuant to this Agreement or otherwise.

11. Choice of Law and Forum.

- a. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof;
- b. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of

Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Contractor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise;

- c. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Department or the State, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise;
- 12. Counterparts.** This Agreement may be executed in any number of counterparts. Only a duly authorized representative may execute any such counterpart which, when executed and delivered, (which deliveries may be made by electronic means) shall be deemed to be an original, and all of which counterparts taken together shall constitute but one and the same instrument.
- 13. Titles and Headings; Construction.** As used throughout this Agreement, titles and headings of sections are for convenience only, and shall not be used to aid in interpretation of the provisions contained therein. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement.
- 14. 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.
- 15. Qualifications of Staff.** The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Iowa Administrative Code.
- 16. Force Majeure.** Neither party shall be liable for any delay in performance or any failure in performance hereunder caused in whole or in part by reason of force majeure, which shall be deemed to include, but not limited to include, without limitation, war, sabotage and other acts of civil disobedience, action of a public enemy or other acts of terrorism, failure or delays in transportation or communication, failure of third party licensors or vendors to support software or hardware products, laws, regulations or acts of any national, state or local government, judicial action, labor dispute, accident, fire, explosion, or other act of God, shortage of labor, fuel or raw materials or machinery or technical failures.
- 17. THIS SECTION IS INTENTIONALLY OMITTED.**
- 18. Public Records.** The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.
- 19. Use of Name or Intellectual Property.** Contractor agrees it will not use the Agency and/or State's name or any of their intellectual property, including but not limited to, any State, state agency, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Agency and/or the State.
- 20. No Minimums Guaranteed.** The Contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

21. 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.

22. Compliance with Iowa IT Policies and Standards

- a. Contractor will comply with and adhere to all State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and provide training to Contractor's employees and subcontractors concerning such standards, procedures and protocols. Current standards are accessible online at <https://ocio.iowa.gov/standards>.
- b. Contractor will take all precautions and actions necessary to: (i) prevent unauthorized access to the State's systems, networks, computers, property, records, data, and information; and (ii) ensure that all of the State's documentation, electronic files, data, and systems are developed, used, and maintained in a secure manner, protecting their confidentiality, integrity and availability.
- c. Contractor agrees that it will not copy, reproduce, transmit, or remove any State information or data without the prior written consent of the State. Contractor agrees that it shall be liable for any damages, losses, and expenses suffered or incurred by the State as a result of: (i) any breach of this section, or (ii) any breaches of security (including those described below) that are caused by any action or omission of Contractor or Contractor's employees, agents and subcontractors. Breaches of security include, but are not limited to disclosure of confidential or sensitive information; unauthorized access to State systems; illegal technology transfer; sabotage or destruction of State information or information systems; compromise or denial of State information or information systems; damage to or loss of State information or information systems; and theft.
- d. The Contractor shall immediately report to the State any such breach of security.

23. Compliance with the Law; Nondiscrimination in Employment. The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers. Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract. In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section. Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

24. Background Checks. The Contractor shall conduct nationwide criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the State's information among the Contractor's employees and agents.

- 25. 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 written 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.
- 26. Legislative Changes.** The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold the State liable in any manner for the resulting changes. The State shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the State's right to terminate the Contract pursuant to the termination provisions.
- 27. Sovereign Immunity.** The Department and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.
- 28. Limitation of Liability.** EXCEPT AS IT RELATES TO MANAGED SERVICES UNDER ATTACHMENT C HERETO, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR ANY OTHER NON-DIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR FUTURE REVENUES, COST OF CAPITAL, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY OR ANY CLAIM OR DEMAND AGAINST THE OTHER PARTY BY ANY THIRD PARTY, HOWEVER CAUSED, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SAID PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EXCEPT AS IT RELATES TO MANAGED SERVICES UNDER ATTACHMENT C HERETO, EACH PARTY'S LIABILITY UNDER THIS AGREEMENT OR OTHERWISE ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID OR PAYABLE BY THE STATE TO CONTRACTOR AS SHOWN ON THE APPLICABLE PURCHASING INSTRUMENT WITH RESPECT TO WHICH SUCH CLAIM RELATES. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT ALLOWED BY LAW, AND EACH PARTY AGREES TO RELEASE THE OTHER PARTY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, REPRESENTATIVES AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY EXCEEDING THE LIMITS STATED IN THIS PROVISION, REGARDLESS OF THE THEORY OF LIABILITY OR REMEDY UNDER WHICH DAMAGES ARE SOUGHT. FURTHERMORE, CONTRACTOR SHALL NOT BE LIABLE FOR THE LOSS OR CORRUPTION OF, OR DAMAGE TO, DATA. NOTWITHSTANDING THE FOREGOING, ANY LIMITATIONS OF CONTRACTOR'S LIABILITY DEFINED HEREIN SHALL NOT APPLY TO:
- a. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;
 - b. Claims related to death, bodily injury, or damage to real or tangible personal property;
 - c. Any contractual obligations of the Contractor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, or confidential information;
 - d. 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.
- 29. Indemnification.** Subject to the constitution and applicable statutes of the State of Iowa and the limitations on liabilities and damages set forth in Section 28 herein, each party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other party, its parent, subsidiary and affiliated companies, and their respective officers, directors, employees and agents (each, an "Indemnified Party"), from and against all claims, demands, liabilities, actions,

judgments, damages, losses, settlements, costs and expenses of any nature (including without limitation reasonable attorneys' fees and disbursements) (collectively, "Damages"), incurred or suffered by the Indemnified Party to the extent directly arising from: (a) any bodily injury or death to persons or physical damages to or loss of tangible personal property, either of which is caused by the negligence of the Indemnifying Party; (b) any gross negligence or willful misconduct on the part of the Indemnifying Party; or (c) any violation by the Indemnifying Party of applicable law, regulation, or ordinance in connection with this Agreement.

- 30. Enforceability.** THE LIMITATION OF DAMAGES AND LIMITATION OF LIABILITY IN SECTION 28 ABOVE SHALL BE ENFORCEABLE WITH RESPECT TO DAMAGES ARISING FROM ANY AND ALL ACTS, CLAIMS OR LEGAL REQUIREMENTS, AND REGARDLESS OF WHETHER ANY PERSON ALLEGES OR PROVES THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OR OTHER CULPABILITY OF THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT, OR THE SOLE OR CONCURRENT STRICT LIABILITY IMPOSED ON THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT. THIS SECTION 30 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

Attachment A

Products Terms and Conditions

- 31. Products - Purchase Orders.** The State shall place an order for Products by submitting a Purchasing Instrument or signed Contractor quote/proposal/purchase authorization or other written evidence acceptable to the Parties of the State's order of Products (an accepted order shall be referred to herein as an "Order").
- 32. Freight Costs; Delivery; Risk of Loss.** Contractor will arrange for shipment and delivery of the Products listed in the applicable Order to the installation site. Unless specifically stated otherwise, the State will be responsible for shipping and delivery charges. Risk of loss to the Products shall pass to the State upon delivery at the State's site.
- 33. Installation.** Unless otherwise expressly provided in the applicable Purchasing Instrument, the State is responsible for, and shall pay all costs associated with, (i) reviewing the Manufacturer's Installation Manual, (ii) verifying that the site is suitable for the operation of the Products purchased hereunder, (iii) preparing a suitable site for the delivery, installation and operation of the Products per the manufacturer's specifications and (iv) installing and operating the Products.
- 34. Title; Security Interest.** Title to each Product (other than software) to be sold by Contractor hereunder shall pass to the State upon delivery. Title to software is not transferred and the right to use software included in the Products shall be governed by a separate license agreement between the State and the software licensor.
- 35. Limited Representations and Warranties.** Contractor represents and warrants that, at the time each Product is delivered, Contractor will be the lawful owner of such Product (other than software products) or shall have the lawful right to deliver such Product to the State, free and clear of any liens and encumbrances and will have full right, power and authority to transfer good and valid title to or right of possession of the same to the State. The Products will be accompanied by the applicable manufacturer's or software licensor's representations and warranties (either directly through the manufacturer/software licensor or as transferred by Contractor) to the extent of and in accordance with the manufacturer's/software licensor's policies and any applicable agreements between Contractor and such manufacturer/licensor.
- a. The State agrees that with respect to the Products, (i) It is relying solely on the manufacturer's or licensor's representations and warranties (except as expressly set forth above), (ii) Contractor shall have no liability or obligations with respect to any manufacturer's or licensor's representations and warranties, and (iii) Any claims for Damages (as defined below) by the State based upon such manufacturer's or licensor's representations and warranties shall be made solely against the manufacturer or licensor.
- b. To the extent consistent with the terms of this Contract and applicable State of Iowa law, as Contractor is not the manufacturer of the Products, the State waives and disclaims any claim against Contractor based upon (i) any infringement or misappropriation or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or other intellectual property rights with respect to any Products sold hereunder or any software licensed by any third party or (ii) any indemnity claim or obligation made by another against the State arising out of any such infringement or misappropriation or alleged infringement or misappropriation.
- c. **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 35, CONTRACTOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO THE STATE OR TO ANY OTHER PERSON OR ENTITY REGARDING PRODUCTS, SOFTWARE OR OTHER ITEMS PROVIDED BY CONTRACTOR UNDER THIS AGREEMENT OR THE RESULTS TO BE DERIVED FROM THE USE THEREOF, AND CONTRACTOR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.
- 36. Product Returns.** Unless visibly damaged on delivery, no Products shall be returned, refunded, canceled, or terminated by the State without prior written approval from Contractor. If Contractor approves such return, a restocking charge may be assessed by Contractor to the State. Said charge for rework, cancellation or restocking will not exceed the actual charge assessed by the manufacturer or vendor to Contractor.

Attachment B

Professional Services Terms and Conditions

- 37. Professional Services - Statements of Work.** Prior to performing any Professional Services, the State and Contractor shall agree upon a written Purchasing Instrument setting forth the scope of Professional Services to be performed, the project schedule, the associated rates, fees and other expenses and any other additional terms as may be agreed to by the parties for such Professional Services. The State acknowledges that Professional Services provided under a Purchasing Instrument may be subcontracted. Notwithstanding anything else in this Agreement, the State acknowledges and agrees that Contractor may perform services for others that are the same as or similar to the Professional Services provided to the State, including without limitation the use of any deliverables that may be delivered to the State under any Purchasing Instrument, to the extent the use of such deliverables does not infringe upon the State's intellectual property rights, and is otherwise consistent with the confidentiality provisions of this Agreement and Iowa State Law.
- 38. Warranty; Disclaimers.** Contractor warrants that Contractor will perform Professional Services in a professional manner and in accordance with the description in the applicable SOW in all material respects. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 38 OR AN APPLICABLE SOW, CONTRACTOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO THE STATE OR TO ANY OTHER PERSON OR ENTITY REGARDING PROFESSIONAL SERVICES OR OTHER ITEMS PROVIDED BY CONTRACTOR UNDER THIS AGREEMENT OR THE RESULTS TO BE DERIVED FROM THE USE THEREOF, AND CONTRACTOR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
- 39. Acceptance.** Except as otherwise set forth in a Purchasing Instrument, the following Acceptance processes and procedures shall apply by default. Upon completion of the Professional Services, Contractor will submit a completion document in a form set forth in the applicable Purchasing Instrument (the "Completion Document"). The State will return the Completion Document in accordance with its instructions within ten (10) business days from the date of receipt thereof. If the State reasonably believes that Contractor failed to substantially complete the Professional Services in accordance with the applicable Purchasing Instrument, the State will notify Contractor in writing of its reasons for rejection of the Professional Services or any portion thereof within ten (10) business days from the State's receipt of the Completion Document. If Contractor does not receive the signed Completion Document or written notification of the reasons for rejection within ten (10) business days of the State's receipt thereof, Contractor will notify the State in writing regarding the absence of the State's response. The State will then have an additional five (5) business days (the "Notice Period") in which to provide Contractor with a signed Completion Document or written notification of the reasons for rejection. If at 5:00pm (CDT) on the final day of the Notice Period the State has failed to provide Contractor with a signed Completion Document or written notification of the reasons for rejection, the failure to notify will constitute the State's acceptance of the Professional Services and a waiver of any right of rejection.
- 40. Change Requests.** From time to time the State may request, or Contractor may propose, that Contractor implement a change to the Professional Services reflected in Purchasing Instrument including, without limitation, (a) a change to the scope of Professional Services, or (b) a change in the prioritization or manner in which Contractor is performing the Professional Services (each, a "Change"). In the event of the occurrence of a mutually agreed Change, Contractor shall prepare and provide to the State a proposed change order. Contractor shall include in the proposed change order the effect, if any, the Change will have on Contractor's schedule of delivery of the Professional Services, and if there will be any effect on the estimated cost or other the State payments. Contractor shall not be responsible or liable for any delays, costs or damages resulting from the State's rejection of, or delay in approving, a proposed change order relating to a Change. In the event the authorized representative of the State requests that Contractor perform work without a mutually agreed upon change order, the State shall compensate Contractor for the additional fees and expenses incurred by Contractor related thereto. In the event the State desires to retain Contractor for additional services outside the scope of

the Professional Services to be provided under a Purchasing Instrument, the State and Contractor agree to execute and deliver such additional statements of work to evidence the additional services to be provided by Contractor.

- 41. Intellectual Property.** The State shall own all rights, title, and interest in and to the Deliverables provided under a Purchasing Instrument and all changes, modification or improvements related thereto, developed by Contractor under such SOW. Contractor shall grant, sell, assign, and convey to the State all rights of Contractor in and to the Deliverables and the tangible and intangible property rights relating to or arising out of the Deliverables, including, without limitation, patent, copyright, trade secret, trademark, and other proprietary rights. Deliverables shall not include, and the transfer of any rights hereunder shall not apply to, Background Technology (as hereinafter defined) or any software, materials or other technology which is owned or controlled by a third party ("Third Party Technology"). "Background Technology" means all processes, tools, works of authorship, programs, data, utilities or other intellectual property, in whatever form, that Contractor prepared or had prepared outside the scope of the Professional Services provided under a Purchasing Instrument that are included in, or necessary to, the Deliverables. Contractor Background Technology, working papers, scripts, proprietary methodology and confidential information belong exclusively to Contractor, including to the extent included in the Deliverables. The State is granted a nonexclusive license to use Contractor Background Technology or Third Party Technology for the limited purpose of implementing the Deliverables for the State's internal purposes.

Attachment C

Managed Services Terms and Conditions

- 42. Managed Services – Statements of Work.** The parties may execute more than one Purchasing Instrument for any particular Managed Service, if appropriate to reflect separate projects and/or separate State locations for such Managed Service. Changes in the scope of Managed Services, performance standards, or fees for any particular Managed Service may be reflected in a revised Purchasing Instrument or a written change request executed by the parties. Contractor may utilize employees of a direct subsidiary of Contractor or subcontractors to perform aspects of the Managed Services if granted prior approval in an executed Purchasing Instrument. Use of such subsidiaries or subcontractors, if located outside of the United States, requires the express approval of the State's authorized representative in a signed writing.
- 43. Fees.** Unless otherwise agreed, stated fees for the Managed Services shall be valid for twelve (12) months from the date Contractor provides such fee information to the State, after which fees may be adjusted once per year upon the mutual agreement of the parties, on the anniversary date of the applicable Purchasing Instrument. Any change, modification or cancellation of any Purchasing Instrument requested by the State after acceptance by Contractor may result in an additional charge to be paid to Contractor by the State.
- 44. Personnel, Communications and Business Partners.** Each party agrees that it will: (i) designate a coordinator who will represent such party in all matters concerning the Managed Services outlined in a Purchasing Instrument; and (ii) be responsible for the supervision, direction, and control of such party's personnel. The coordinators shall meet, in person or by telephone as mutually agreed between the parties, at least once each calendar month, or more often as determined by the parties, to (a) discuss the parties' performance of their respective obligations during the preceding month and any planned changes and future performance of the parties, and (b) exchange information needed for such performance. Contractor will prepare and submit to the State, as part of the Managed Services and at no additional cost, a set of monthly status reports as agreed between the parties. Contractor reserves the right to determine the assignment of its personnel. Notwithstanding the foregoing, nothing in this provision shall be construed to otherwise limit the State's Right to Remove Contractor personnel as established elsewhere in this Agreement.
- 45. No Product or Software Sales or Licenses..** Except as expressly stated in a Purchasing Instrument, Contractor is not selling, licensing, or otherwise providing to the State any software, hardware, third party maintenance or other products or property under this Attachment C. Contractor may use, in the provision of Managed Services to the State, one or more items of hardware, software, third party maintenance or other personal property, all of which shall be owned exclusively by, and remain under the exclusive control of, Contractor, even if such hardware, software or other personal property is located on the State premises or integrated with the State or third party property during the term of this Agreement. The State may not use any hardware, software, or personal property provided by Contractor under this Agreement for any purpose other than the performance of Managed Services under this Agreement.
- 46. State Defense of Infringement Claims.** If a third party brings or threatens a claim against Contractor based on any contention that any hardware, software or other personal property of the State or any other third party infringes on or misappropriates that third party's patent, copyright, trade secret, trademark or other proprietary right, excluding any claims based on and solely to the extent of Contractor' unauthorized use or misuse of such hardware, software or other personal property, the State will indemnify and defend Contractor and its officers, directors, employees, and representatives from and against that claim at the State's expense and pay all costs, damages, and reasonable attorney fees incurred by Contractor in connection with such claim, provided that Contractor (i) promptly notifies the State in writing of the claim; and (ii) allows the State to control, with Contractor's reasonable cooperation, the defense of such claim and any related settlement negotiations; provided further that any failure or delay by Contractor in providing such notice shall not relieve the State from its obligation to indemnify under this Agreement except to the extent such failure or delay actually and materially causes prejudice to the State. The State shall not settle any such claim in a manner that would result in an admission of liability or a payment obligation on the part of Contractor without the prior express written permission of Contractor.

47. Contractor Defense of Infringement Claims. If a third party brings or threatens a claim against the State based on any contention that any hardware, software or other personal property of the Contractor or any other third party infringes on or misappropriates that third party's patent, copyright, trade secret, trademark or other proprietary right, excluding any claims based on and solely to the extent of Contractor's unauthorized use or misuse of such hardware, software or other personal property, the Contractor will indemnify and defend the State and its officers, directors, employees, and representatives from and against that claim at the Contractor's expense and pay all costs, damages, and reasonable attorney fees incurred by the State in connection with such claim, including reasonable time incurred by the State Attorney General's office, provided that the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows the Contractor to control, in conjunction with the State, the defense of such claim and any related settlement negotiations; provided further that any failure or delay by the State in providing such notice shall not relieve the Contractor from its obligation to indemnify under this Agreement except to the extent such failure or delay actually and materially causes prejudice to the Contractor. Contractor shall not settle any such claim in a manner that would result in an admission of liability or a payment obligation on the part of the State without the prior express written permission of the State.

48. RESERVED.

49. Migration and Transfer Assistance

- a. **Migration.** In the event migration services are required in order for Contractor to provide the Managed Services under a particular Purchasing Instrument, Contractor will plan and manage the migration of the State's then current data processing capabilities to the target environment in accordance with the scope of the applicable Purchasing Instrument. The State will pay for the migration services and any associated fees as detailed in the Purchasing Instrument. The State shall cooperate with Contractor in accomplishing all aspects of the migration, including the commitment of the resources necessary to complete the migration during and in defining the rules for and assisting in the performance of all aspects of the migration.
- b. **Transfer Assistance.** In the event that any Purchasing Instrument is terminated, regardless of the reason for such termination, or upon the expiration of any Purchasing Instrument, Contractor will reasonably cooperate in good faith and at the State's expense, with the State to assist with the orderly transition of the Managed Services provided by Contractor under such Purchasing Instrument to another service provider or to the State. At the State's request, Contractor shall, for up to three (3) months, or any other such time period as may be agreed upon by the parties in writing, following expiration or termination of the Purchasing Instrument, provide available staff and resources to actively and reasonably assist the State in the transition process, at an hourly fee (plus expenses) to be agreed upon by the parties.

50. Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN AN APPLICABLE PURCHASING INSTRUMENT, CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO THE STATE OR TO ANY OTHER PERSON OR ENTITY REGARDING MANAGED SERVICES OR OTHER ITEMS OR SERVICES PROVIDED BY CONTRACTOR UNDER THIS AGREEMENT (OR ANY APPLICABLE PURCHASING INSTRUMENT) OR THE RESULTS TO BE DERIVED THEREFROM, AND CONTRACTOR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONTRACTOR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES WITH REGARD TO THE PROVISION OF ANY MANAGED SERVICES RELATING TO SYSTEMS OR DATA SECURITY OR PRIVACY.

51. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS ATTACHMENT C FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR ANY OTHER NON-DIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR FUTURE REVENUES, COST OF CAPITAL, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY OR ANY CLAIM OR DEMAND AGAINST THE OTHER PARTY BY ANY THIRD PARTY, HOWEVER CAUSED, WHETHER UNDER

THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SAID PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL CONTRACTOR'S LIABILITY UNDER THIS ATTACHMENT C OR OTHERWISE ARISING OUT OF THIS ATTACHMENT C REGARDLESS OF THE FORM OF ACTION, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL SERVICE FEES PAID BY THE STATE TO CONTRACTOR FOR THE PRECEDING THREE (3) MONTH PERIOD UNDER THE APPLICABLE PURCHASING INSTRUMENT UNDER WHICH CONTRACTOR IS PERFORMING MANAGED SERVICES, WITH RESPECT TO WHICH SUCH CLAIM RELATES. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT ALLOWED BY LAW, AND EACH PARTY AGREES TO RELEASE THE OTHER PARTIES, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, REPRESENTATIVES AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY EXCEEDING THE LIMITS STATED IN THIS PROVISION, REGARDLESS OF THE THEORY OF LIABILITY OR REMEDY UNDER WHICH DAMAGES ARE SOUGHT.

FURTHERMORE, CONTRACTOR SHALL NOT BE LIABLE FOR THE LOSS OR CORRUPTION OF, OR DAMAGE TO, DATA. NOTWITHSTANDING THE FOREGOING, ANY LIMITATIONS OF CONTRACTOR'S LIABILITY DEFINED HEREIN SHALL NOT APPLY TO:

- a. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;
- b. Claims related to death, bodily injury, or damage to real or tangible personal property;
- c. Any contractual obligations of the Contractor under this Attachment C pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, or confidential information;
- d. Claims arising under provisions of this Attachment C 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

52. Indemnification. Subject to the constitution and applicable statutes of the State of Iowa and the limitations on liabilities and damages set forth in Section 51 herein, each party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other party, its parent, subsidiary and affiliated companies, and their respective officers, directors, employees and agents (each, an "Indemnified Party"), from and against all claims, demands, liabilities, actions, judgments, damages, losses, settlements, costs and expenses of any nature (including without limitation reasonable attorneys' fees and disbursements) (collectively, "Damages"), incurred or suffered by the Indemnified Party to the extent directly arising from: (a) any bodily injury or death to persons or physical damages to or loss of tangible personal property, either of which is caused by the negligence of the Indemnifying Party; (b) any gross negligence or willful misconduct on the part of the Indemnifying Party; or (c) any violation by the Indemnifying Party of applicable law, regulation, or ordinance in connection with this Agreement.

53. Enforceability. THE LIMITATION OF DAMAGES AND LIMITATION OF LIABILITY IN ATTACHMENT C, SECTION 51 ABOVE SHALL BE ENFORCEABLE WITH RESPECT TO DAMAGES ARISING FROM ANY AND ALL ACTS, CLAIMS OR LEGAL REQUIREMENTS, AND REGARDLESS OF WHETHER ANY PERSON ALLEGES OR PROVES THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OR OTHER CULPABILITY OF THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT, OR THE SOLE OR CONCURRENT STRICT LIABILITY IMPOSED ON THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT. THIS ATTACHMENT C, SECTION 53 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.