

The State of Iowa Email & Productivity Application Services, RFP #1214005011

Master Service Agreement

This Master Services Agreement ("**Agreement**") is entered into this 1ST day of July, 2015 ("**Effective Date**") by and between **Tempus Nova, Inc.**, a Colorado corporation, with its principal place of business at 1550 Larimer Street, Suite 217, Denver, CO 80202 ("**Vendor**") and the State of Iowa, acting by and through the Office of the Chief Information Officer ("**State of Iowa**") for the provision of services in accordance with the following terms and conditions. When used herein the term "**Agreement**" includes the body of this Agreement and each Statement of Work entered into by the parties hereunder and all Exhibits attached hereto. Vendor and the State of Iowa may be referred to in this Agreement individually as a "**Party**" and together as the "**Parties.**"

1. **Services.** Vendor will provide the services ("**Services**") and deliver the deliverables ("**Deliverables**") described in one or more written, statements of work ("**Statements of Work**") that incorporate this Agreement by reference and are attached hereto as part of Exhibit A (each, a "**Statement of Work**"). Each Statement of Work will be effective only when signed by the State of Iowa and Vendor. Once a Statement of Work has been executed, Vendor will carry out and complete the duties and responsibilities set forth in the applicable Statement of Work in accordance with the terms and conditions of such Statement of Work and this Agreement. Vendor agrees that the terms of this Agreement will apply to all services performed by Vendor for the State of Iowa, even if a Statement of Work has not been completed for such services, unless such services are specifically covered by another written agreement between the Parties. The rights and obligations of the State of Iowa may be, in whole or in part, exercised or fulfilled by any governmental entity, as defined in Iowa Code Section 8A.101, or any successor provision to that Section, existing now or in the future ("**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 payments due under the Statement of Work. 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. **Project Schedule Defaults.** To the extent the Parties agree upon a specific schedule or project plan ("**Project Plan**") in a Statement of Work for the completion of the relevant Services and/or Deliverables, Vendor shall complete the Services and Deliverables within the time prescribed. In the event Vendor fails to achieve any of the specified delivery dates in the Statement of Work, such failure shall constitute a material breach of this Agreement. In addition to and cumulative of all other remedies available to the State of Iowa under this Agreement, at law, or in equity, Vendor shall issue a credit to the State of Iowa in the amount set forth in the Statement of Work for each day of delay beyond the scheduled completion dates. Vendor agrees and acknowledges that such amount is reasonable and appropriate and does not constitute a penalty. Vendor shall not be liable for delays caused by the State of Iowa.

3. **Hardware.** To the extent the State of Iowa will purchase any hardware or other equipment (collectively, "**Hardware**") from Vendor, such Hardware shall be specifically identified in the applicable Statement of Work, including all applicable fees and costs. Title to each item of Hardware shall pass to the State of Iowa on delivery to the facility designated by the State of Iowa and payment in full of the fees associated with that particular item. Vendor shall be responsible for customary and appropriate product packaging, freight charges, insurance, and delivery of the Hardware to the State of Iowa designated FOB destination. Vendor shall ensure delivery of the Hardware within the times prescribed in the Statement of Work. All Hardware and the parts therein shall be new and shall not contain any refurbished or used parts.

4. **Vendor; No Subcontracting.** None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any subcontractor or other third party without the prior written consent of the State of Iowa, which consent may be withheld in the State of Iowa's sole discretion. The Vendor shall select and utilize only those subcontractors that are capable of meeting or exceeding all of the requirements set forth in this Agreement. The State of Iowa consents to Vendor's use of Google, Inc. as a

subcontractor for purposes of, among other things, providing all of the services and deliverables described in the Google Apps for Government via Reseller Terms of Service between Vendor and Google, Inc. ("Google")(the "Google Subcontract"), attached as Exhibit F. Vendor agrees that the Google Subcontract will not be modified, amended, or terminated by either Vendor or Google without prior written consent of the State of Iowa, which consent shall not to be unreasonably withheld. Vendor shall: (i) be responsible for performing and complying with all duties and obligations of the Reseller under the Google Subcontract, including paying its subcontractor; (ii) be fully and financially responsible and liable for ensuring that Google provides all of the services and deliverables described in the Google Subcontract and performs, meets and complies with all of the provisions, requirements, duties and obligations that are in any way applicable to Google under the Google Subcontract; and (iii) fully and financially responsible and liable for ensuring that the State of Iowa receives all benefits, privileges, rights, protections and remedies that are described in the Google Subcontract and to which the Customer is entitled thereunder. Vendor shall oversee each subcontractor's compliance with the provisions and requirements of this Agreement and any subcontract and shall be fully and financially responsible to the State of Iowa for any failure of a subcontractor to perform and comply with any of its duties and obligations. The State of Iowa's consent 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 to which the State of Iowa has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify and hold harmless the State of Iowa from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any subcontractor. In addition, the State of Iowa is not responsible for any failure of any subcontractor to pay any amounts that may be due to Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the Services and/or Deliverables 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 Vendor under this Agreement. The payment of a claim in the manner authorized in this paragraph shall not relieve Vendor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow the State of Iowa to access the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Vendor, would constitute a breach of this Agreement or any subcontract, shall be deemed a breach by Vendor and have the same legal effect.

5. Acceptance.

5.1 Acceptance, Generally. In order to ensure the State of Iowa is satisfied with the Services and Deliverables, the Acceptance Management Process will be leveraged at appropriate intervals. This process will ensure Vendor meets or exceeds the State of Iowa's expectations and ensures maximum customer confidence throughout the Project. The State of Iowa may, in its sole discretion, elect to test or evaluate the related Services and/or Deliverables to determine whether they comply in all material respects with the requirements of this Agreement, any applicable Specifications (defined in Section 5.3 (Specifications)), or any Acceptance Criteria (as defined in Section 5.1 (Acceptance Criteria)). The Vendor shall provide the State with written notice when a Service or Deliverable is complete and ready for review and testing, along with any additional information needed to access, inspect, or test the Service or Deliverable. The State of Iowa shall have at least thirty (30) business days, or such other period of time as may be agreed to by the Parties in a Statement of Work or Project Plan, to complete its review and testing. Upon completion of its review and testing, the State of Iowa shall notify Vendor in writing whether it has accepted such Services and/or Deliverables ("**Accept**"), or whether it has identified discrepancies with any Specifications and/or Acceptance Criteria ("**Reject**"). The State of Iowa shall endeavor to provide written notice if Vendor fails to perform any of its duties or obligations or if there is a deficiency within five (5) business days after the end of the review and testing period; provided however, that in the event the State of Iowa fails to complete its testing or provide such notice within the periods set forth above, Vendor shall provide the State of Iowa with written notice of such lack of notice and the State of Iowa shall have an additional five (5) business days from the receipt of such written

notice to complete its testing and review and provide written notice of its Acceptance or Rejection to Vendor. Acceptance does not waive any of the warranties provided in Section 19 (Representations, Warranties, and Remedies) or otherwise limit the State's rights or remedies hereunder for any Deficiencies or for any failure of Vendor to meet any obligations hereunder or for any failure of a Deliverable to meet an applicable Specification. If the State of Iowa Rejects a Service and/or Deliverable, the State of Iowa shall provide a written list of items that must be corrected together with detailed requirements. On receipt of the State of Iowa's notice, Vendor shall promptly commence, at no additional charge to the State of Iowa, all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the Services and/or Deliverables as will permit them to be ready for retesting, but in no event shall such corrective measures exceed ten (10) days from receipt of the State of Iowa's notice unless otherwise agreed in writing by the Parties. The testing and evaluation process shall resume, as set forth above. If the State of Iowa determines that the Services and/or Deliverables, as revised, still do not comply in all material respects with the Specifications, the State of Iowa may, at its sole option, either: (a) afford Vendor the opportunity to repeat the correction and modification process as set forth above at no additional cost or charge to the State of Iowa, (b) accept such Service and/or Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the State of Iowa's satisfaction, the discrepancies with the Service and/or Deliverable present therein and any reduced value or functionality of such Service and/or Deliverable or the costs likely to be incurred by the State of Iowa to correct such discrepancies with the Service and/or Deliverable; (c) depending on the nature and extent of the failure in the State of Iowa's sole judgment, terminate the relevant Statement(s) of Work, or (d) terminate this Agreement and/or seek any and all available remedies, including damages without providing Vendor with any notice or opportunity to cure. The foregoing procedure shall be repeated until the Service and/or Deliverables pass Acceptance by the State of Iowa, or the State of Iowa elects to terminate the Statement(s) of Work or the Agreement as provided above. If the State of Iowa terminates a Statement of Work or the Agreement as provided above, Vendor shall pay to the State of Iowa, within ten (10) business days of written notice of termination, all sums paid to Vendor by the State of Iowa under this Agreement for the Services and/or Deliverables as to which the termination applies. Vendor's receipt of any notice of Acceptance, with respect to any Services and/or Deliverables shall not be construed as a waiver of any of the State of Iowa's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any discrepancy with the Service and/or Deliverable is later discovered.

5.2 **Acceptance Criteria** is defined as follows: Acceptance Criteria will be determined by the State of Iowa in consultation with Vendor within a mutually agreed to period. Acceptance Criteria may require the successful execution of test cases that are reflective of the project's requirements. Additionally, the delivery and acceptance and potential re-work of Services and/or Deliverables may be provided for in the Project Plan. Unless otherwise specified in the Project Plan or the Statement of Work, the process for Acceptance of Services and/or Deliverables shall be as described above.

5.3 **Specifications.** "Specifications" mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Services and Deliverables stated or expressed in this Agreement (and/or in any other document or agreement related to this Agreement, the Implemented System (as defined below), Software (as defined below), or the Project, including any Statement(s) of Work), the Documentation (as defined below), the RFP (as defined below), and the Proposal (as defined below). Specifications shall include the goals, performance measures, testing results and/or other criteria, including any Acceptance Criteria, designated by the State of Iowa and against which the Services or Deliverables may be evaluated for purposes of Accepting or Rejecting thereof, and any specifications, standards (including, without limitation, any IT standards issued by the State and the State of Iowa Office of the Chief Information Officer) or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement. "Software" means Google Apps and Vault solution and all other software, programs, applications, modules and components which comprise or are in way related to the system as implemented under this Agreement ("Implemented System") or are otherwise developed, licensed or provided by or on behalf of Vendor under this Agreement or any related agreement (including the SaaS Agreement). Without limiting the foregoing, the term Software shall include all related software, programs, applications, modules, and documentation, any and all enhancements and updates to and copies of the foregoing. "Documentation" shall mean Vendor's training course materials, system specifications, help manuals, technical manuals, and all other user instructions provided by Vendor or otherwise made available or accessible to the State of Iowa regarding

the capabilities, operation, and use of the Services or Deliverables, including any revisions, supplements, or updates thereto.

6. Support Services. In addition to any warranty obligations of Vendor hereunder, Vendor shall: (a) promptly correct any failure of the Services and/or Deliverables to perform in accordance with the requirements of this Agreement, including without limitation, defect repair, corrections, and remedial programming as applicable, and provide such services and repairs required to maintain the Services and/or Deliverables so that it operates properly and in accordance with the requirements of this Agreement; (b) provide telephone support during the performance of any Services or Deliverables under a Statement of Work to the State of Iowa and its representatives relating to use and operation of the Services and/or Deliverables; and (c) provide post deployment support, which includes supporting the State of Iowa in utilizing Google's free 24x7 support service and such other support as provided in accordance with the Google Subcontract.

7. Vendor Personnel. Should the State of Iowa be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any staff assigned by Vendor to perform the Services under this Agreement, the State of Iowa may request the replacement of that staff. The replacement request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. In the event Vendor should ever need to remove any staff from performing the Services under this Agreement, Vendor shall provide the State of Iowa with adequate notice, except in circumstances in which such notice is not possible, and shall work with the State of Iowa on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Such transitioning to replacement personnel shall be at no additional cost to the State of Iowa. Vendor agrees that all project staff assigned to perform under this Agreement must have experience performing the tasks to which they will be assigned under this Agreement. In the event that, as a result of the actions or inaction of Vendor project staff, additional or accelerated work is required to perform this Agreement, Vendor shall perform all such work at no additional charge to the State of Iowa. In addition, Vendor represents and warrants that it will, to the maximum extent possible, take all necessary steps to assure continuity over time of the membership of the group constituting Vendor's project staff. Vendor shall promptly fill any staff vacancy with personnel having qualifications at least equivalent to those of the project staff member(s) being replaced.

8. Vendor Access to the State of Iowa Facilities; Conduct of Vendor Personnel. Vendor, its employees and agents may be granted access to the State of Iowa facilities, subject to compliance with the State of Iowa's standard administrative and security requirements and policies, for the purpose of performing the Services. Access to the State of Iowa facilities shall be restricted to normal State of Iowa business hours. Access to the State of Iowa facilities outside normal business hours must be approved in advance by the State of Iowa's program manager. Vendor shall have no tenancy, license or any other property or other rights or interest in the State of Iowa facilities. While present at the State of Iowa facilities, Vendor's personnel shall be accompanied by the State of Iowa personnel, unless otherwise specified prior to such event by the State of Iowa's program manager or his or her designee. All Vendor personnel shall carry and produce when requested a valid Vendor identification card. Vendor shall not in any way physically alter or improve any the State of Iowa facility without the prior written approval of the State of Iowa in its sole and absolute discretion. While at any the State of Iowa facility, Vendor's personnel, contractors, and subcontractors shall: (a) comply with the State of Iowa's requests, rules, policies, and regulations regarding personal and professional conduct (including without limitation, the wearing of an identification badge or personal protective equipment and adhering to regulations and general safety practices or procedures), and (b) otherwise conduct themselves in a professional and businesslike manner.

9. Damage to the State of Iowa Facilities. The State of Iowa shall repair, or cause to be repaired, at Vendor's own cost, any and all damage to the State of Iowa facilities, including, without limitation, the State of Iowa's buildings, grounds, equipment, and furniture, caused by Vendor or employees or agents of Vendor. Vendor shall notify the State of Iowa immediately of any and all damages. All costs incurred by the State of Iowa, as determined by the State of Iowa, for such repairs shall be repaid by Vendor by cash, check or wire transfer payment upon demand, or without limitation of the State of Iowa's other rights and remedies provided by law or under this Agreement. Alternatively, the State of Iowa may deduct such costs from any amounts due to Vendor from the State of Iowa under this Agreement.

10. Project Management and Control; Reporting.

10.1 Project Manager. At the time of execution of this Agreement, Vendor shall designate, in writing, a Project Manager acceptable to the State of Iowa to serve until the expiration of this Agreement. Vendor will assign a Project Manager of a management level sufficient to assure timely responses from all Vendor personnel, timely completion of tasks and achievement of Milestones, and whose resume and qualifications will be reviewed and approved by the State of Iowa prior to her or his appointment as Vendor's Project Manager. Vendor represents and warrants that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions pursuant to this Agreement on behalf of and for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be available either by telephone or e-mail to respond promptly after receipt of a request or inquiry from the State of Iowa.

10.2 Review Meetings. Commencing with performance of this Agreement, Vendor's Project Manager shall meet weekly with the State of Iowa's project manager and representatives, unless otherwise mutually agreed, to discuss progress made by Vendor in the performance of this Agreement. At each review meeting, Vendor's Project Manager shall provide a status report, which includes, at minimum, the information described in Section 10.3 (Reports) and describes any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any party has identified in writing a problem, Vendor 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. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance under this Agreement.

10.3 Reports. Vendor shall provide the State of Iowa with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, proposed changes to the Project Plan, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the State of Iowa may request. Upon request by the State of Iowa, Vendor shall make reasonable changes to the format and the level of detail presented in the status reports.

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

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

(a) Written Request. The State of Iowa shall specify in writing the desired modifications to the Statement of Work with the same degree of specificity as in the original Statement of Work.

(b) Vendor's Response. Vendor shall submit to the State of Iowa any proposed modifications to the Statement of Work and/or Project Plan and a cost proposal, if applicable, for the requested change order within five (5) business days of receiving the State of Iowa's change order request. Vendor agrees that there shall be no additional cost or Vendor compensation for or with respect to any change order requests for modifications, Services, Deliverables, modules or functionality that are envisioned in, conceptually similar in nature to, or consistent with, the RFP or the Proposal. Modifications to the Statement of Work that incorporate additional detail with respect to any Service and/or Deliverable will not have the effect of increasing the cost of that Service and/or Deliverable, unless Vendor can show by clear and convincing evidence to the State of Iowa that the process of gathering detailed requirements revealed information previously unknown to Vendor, that such new information will cause the estimated time, and therefore cost,

necessary to complete a particular Service and/or Deliverable to increase, and that the incorporation of that information alone into the Statement of Work is the sole cause of the additional time and cost.

(c) Vendor's Change Order Request. Vendor may request a Change Order by specifying in writing the desired modifications to the Statement of Work with the same degree of specificity as in the original Statement of Work. Vendor's Project Manager will review the proposed Change Order and determine whether to submit the request to the State of Iowa. Upon receipt of a Change Order request from the Vendor's project manager, the State of Iowa shall review the proposed Change Order and may, in its sole discretion, either approve it, reject it, or investigate it further.

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

10.6 Key Personnel. The State of Iowa considers Joseph Dellanno, Solutions Architect ("Key Personnel") to be essential to a successful project. Vendor acknowledges that a significant reason the State of Iowa has entered into this Agreement is because of the special qualifications of such Key Personnel. Vendor shall not remove, reassign, transfer, or replace any of the individual(s) identified in this Section except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of the State of Iowa's written consent. In the event Vendor requests the State of Iowa to consent to a removal, reassignment, transfer or other replacement of any Key Personnel, the State of Iowa may review the qualifications of the proposed substitute personnel before providing its written consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better ability, experience and qualifications than the Key Personnel being replaced. Vendor shall not charge the State of Iowa, and the State of Iowa shall not pay for any proposed replacement personnel while such replacement becomes acclimated to the Project, and acquires the necessary skills and project knowledge to proceed with the work under this Agreement. In no event shall this time period exceed twenty (20) business days. Any replacement personnel approved by the State of Iowa shall thereafter be deemed Key Personnel for purposes of this Agreement. If at any time during the term of this Agreement, the State of Iowa becomes dissatisfied with the performance of any individual who is part of Vendor's personnel, the State of Iowa shall notify Vendor of the reasons for such dissatisfaction and may request replacement of such individual. Vendor will promptly investigate such request and the reasons for such dissatisfaction and report back to the State of Iowa on the corrective action Vendor believes is appropriate to address the State of Iowa's concerns and dissatisfaction. If the parties determine that such individual needs to be replaced, the replacement shall be effected promptly with a substitute individual having equal or greater ability, experience and qualifications than the departing individual.

11. Compliance with Applicable Laws.

11.1 Compliance with Applicable Laws. Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Iowa Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Iowa Department of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Vendor

shall make the provisions of this Section a part of its contracts with any subcontractors providing goods or services related to Vendor's performance of this Agreement.

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

12. Term and Termination.

12.1 Term. The initial term of this Agreement is from July 1, 2015, through June 30, 2018 (the "Initial Term"), unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the State of Iowa shall have the option to extend/renew this Agreement for up to five (5) additional one-year renewal terms (each a "Renewal Term"). The decision to extend the Agreement will be at the sole option of the State of Iowa and may be exercised by the State of Iowa by providing written notice to Vendor. The Initial Term and any Renewal Terms are referred to herein collectively as the "Term."

12.2 Bankruptcy. The State of Iowa may, in its sole discretion, terminate this Agreement in the event of Vendor commencing voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of Vendor, or upon Vendor making a general assignment for the benefit of its creditors, or the sale or change of control of the business of Vendor.

12.3 Material Breach. If either Party materially defaults in the performance of any of its obligations under this Agreement, which default (a) if of a non-monetary nature, is not substantially cured within thirty (30) days after written notice specifying the default is given to the defaulting Party, or (b) if of a monetary nature and there is no dispute about the invoice or the work or the expense with respect to which an invoice has been issued, is not cured within twenty (20) days after written notice specifying the default is given to the defaulting Party, the Party not in default may, by giving written notice thereof to the defaulting Party, terminate the Agreement, as of a date specified in such notice of termination. Termination of such payment obligations shall be in addition to any other rights or remedies that the Parties may have in the event of any such breach or alleged breach.

12.4 Termination for Convenience. The State of Iowa may terminate this Agreement or any Statement of Work, Service, or Deliverable immediately upon fourteen (14) days written notice to Vendor without reason, penalty or breach of this Agreement, notwithstanding that Vendor is in compliance with all delivery, performance or other requirements. In the event of any such termination, Vendor shall be compensated for any Services rendered to the State's satisfaction prior to the effective date of the termination, but any compensation allocated to Services that were yet to be rendered with regard to any canceled aspect of the Services shall then be eliminated.

12.5 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the State of Iowa shall have the right to terminate this Agreement without penalty or liability and without any advance notice as a result of any of the following: (a) the legislature or governor fail in the sole opinion of the State of Iowa to appropriate funds sufficient to allow the State of Iowa to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; (b) if funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the State of Iowa (regardless of the source of funding or revenues) to make any payment hereunder are insufficient or unavailable for any other reason as determined by the State of Iowa in its sole discretion; (c) if the State of Iowa's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; (d) if the State of Iowa's duties, programs or responsibilities are modified or materially altered; (e) if any event or circumstance occurs that impacts or affects the ability of the State of Iowa or any Governmental Entity, to continue to operate, use, maintain or pay for the Implemented System, Services and/or Deliverables (or any part or component thereof); or (f) 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 of Iowa's ability to fulfill any of its obligations under this Agreement or the use, operation or maintenance of the Implemented System, or any portion or component thereof.

12.6 Effect of Termination. Upon termination of this Agreement, unless otherwise specified by the State of Iowa in writing:

(a) Vendor shall cease to perform the Services and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the State of Iowa may require.

(b) Except in the case of termination by the State of Iowa pursuant to Section 12.3 and except as provided below, the State of Iowa shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the State of Iowa up to and including the date of termination of this Agreement and for which the State of Iowa is obligated to pay pursuant to this Agreement; provided however, that in the event the State of Iowa terminates this Agreement pursuant to Section 12.5 (Termination Due to Lack of Funds or Change in Law), the State of Iowa's obligation to pay Vendor 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 Vendor's claim.

(c) Notwithstanding the foregoing, this Section 12.6 in no way limits the rights or remedies available to the State of Iowa and shall not be construed to require the State of Iowa to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the State of Iowa in accordance with the terms of this Agreement.

(d) The State of Iowa shall not be liable, under any circumstances, for any of the following: (i) the payment of unemployment compensation to Vendor's employees; (ii) the payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates; (iii) any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement; (iv) any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement; (v) any taxes Vendor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

(e) Expiration or termination of this Agreement for any reason will not release the Vendor from any liabilities or obligations set forth in this Agreement which (a) the Vendor has expressly agreed in writing will survive any such expiration or termination or (b) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination. The following Sections shall survive any termination or expiration of this Agreement: 9 (Damage to State of Iowa Facilities) to the extent Vendor caused damage during the Term, 12.6 (Effect of Termination), 13.3 (Erroneous Payments and Credits), 13.4 (Corrections / Cure), 13.9 (Sett-off Against Sums Owed by Vendor), 13.10 (Withholding Payment), 13.11 (Audits and Records), 14 (Intellectual Property), 15 (Confidential Information, Publicity, and Privacy), 17 (Vendor Systems) to the extent Vendor retains any State of Iowa Confidential Information, 18 (Indemnification), 19 (Warranties and Remedies), 21 (Insurance) for up to two (2) years after termination, and 23 (General Provisions).

(f) Vendor will cooperate with the State of Iowa and take all reasonably requested steps to assist the State of Iowa in making an orderly transition of the Services back to the State of Iowa or its designees and will cooperate in the return of all Confidential Information and other related documents. In connection with the transition assistance as provided in the Google Subcontract, the transition assistance will include, without limitation, a continuation of the license rights hereunder and applicable Services and/or Deliverables, including access to remotely hosted software or Services, knowledge transfer (including applicable documentation) from Vendor to the State of Iowa and/or its designees, and the delivery of Confidential Information to the State of Iowa and/or its designees. The transition assistance shall continue until such time the transition has been successfully completed and concluded in accordance with the Google Subcontract. The transition assistance will be deemed by the parties to be governed by the terms and conditions of Agreements, except for those terms or conditions that do not reasonably apply to such transition assistance. Unless termination results from an uncured

breach by Vendor or due to lack of funds, Vendor shall be paid at the rates set forth in this Agreement or as otherwise mutually agreed to by the parties, subject to legally available funds. The State of Iowa may seek specific performance of Vendor's obligations under this Section, and Vendor hereby waives any defense that damages are an adequate remedy. Compliance with this Section by either party shall not constitute a waiver or estoppel with regard to any rights or remedies available to the parties.

13. Fees and Expenses.

13.1 Compensation. In consideration of Vendor providing the State of Iowa with the Services Deliverables in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such Services and Deliverables as specified in a Statement of Work, subject to all terms and conditions of this Agreement, including, without limitation Section 13.2 (Invoices). The State of Iowa shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement or any Statement of Work. All fees and compensation payable hereunder to Vendor are fixed, not-to-exceed amounts, and except as may otherwise be agreed to by the State of Iowa in writing, Vendor shall not be compensated on a time and materials basis. Vendor is not entitled to payment for any Service or Deliverable provided under this Agreement or any Statement of Work if the State of Iowa reasonably determines that such Deliverable has not been satisfactorily or completely delivered or performed, or that such Service or Deliverable fails to meet or conform applicable Specifications or that there is a material Deficiency (defined below) with respect to such Service or Deliverable. A "Deficiency" means a defect, flaw, error, bug, 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 applicable Specifications. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable. In no event shall the State of Iowa be obligated to pay Vendor any fees, costs, compensation or other amounts in excess of the amount specified in a Statement of Work for any one or more Deliverables, unless the State of Iowa otherwise agrees to pay such fees, costs, compensation other amounts pursuant to a written Change Order or an amendment to this Agreement executed by the State of Iowa. The making of any payment or payments by the State of Iowa, or the receipt thereof by Vendor, shall in no way affect the responsibility of Vendor to furnish the Deliverables and Services in accordance with this Agreement, and shall not imply acceptance by the State of Iowa of such items or the waiver of any warranties or requirements of this Agreement. Vendor's acceptance of the last payment from the State of Iowa shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the State of Iowa or other Governmental Entities. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement.

13.2 Invoices. Upon Acceptance from the State of Iowa with respect to all Services and/or Deliverables associated with an applicable Milestone (as provided in the Statement of Work), Vendor shall submit an invoice to the State of Iowa requesting payment of the fees or other compensation specified in the Statement of Work associated with such Deliverable(s). All invoices submitted by Vendor shall comply with all applicable laws, rules and requirements (including any applicable federal laws, rules or requirements) 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 State of Iowa. Each invoice shall fairly and accurately describe in reasonable detail the actual services performed, the person(s) or entity(ies) who performed such services, the dates on which such services were performed, and the fees and expenses payable by the State of Iowa for such services. The State of Iowa shall pay all approved and undisputed invoices in arrears in sixty (60) days as provided and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2), each as set forth in Exhibit G, as each may be amended, modified, repealed, or replaced from time-to-time and shall, without further action of the parties, automatically amend this Agreement. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. The State of Iowa shall notify Vendor in writing if there exists a dispute and Vendor will have the opportunity to correct such reporting and/or to resubmit the invoice. If Vendor does not correct such reporting, the State of Iowa will not be required to make payment on such invoice. The State of Iowa may refuse payment with respect to any invoice that fails to comply with the requirements contained in this Section. Notwithstanding anything herein to the contrary, the State of Iowa shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the State of Iowa believes the invoice is inaccurate or incorrect in any way. The State of Iowa shall not unreasonably withhold

such payment. The State of Iowa shall provide a valid purchase order (PO) within 10 days of execution of the Statement of Work to accounting@tempusnova.com.

13.3 Erroneous Payments and Credits. Vendor shall promptly pay or refund to the State of Iowa the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the State of Iowa of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the State of Iowa under this Section 13.3, the State of Iowa will charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The State of Iowa may, in its sole discretion, elect to have Vendor apply any amounts due to the State of Iowa under this Section 13.3 against any amounts payable by the State of Iowa under this Agreement.

13.4 Correction/Cure. The State of Iowa may correct any Deficiencies with respect to any Deliverable or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the State of Iowa. The State of Iowa may provide or procure the services reasonably necessary to correct any Deficiencies or cure any Vendor default, in which event Vendor shall reimburse the State of Iowa for the actual costs incurred by the State of Iowa for such services (or for the reasonable value of the time expended by any State employees who provide such services). In addition, Vendor shall cooperate with the State of Iowa or any third parties retained by the State of Iowa who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor.

13.5 Responsibility for Costs. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be responsible for all costs, charges and expenses it incurs in connection with its performance of Services, including but not limited to travel, mileage, meals, lodging, all costs of equipment provided by Vendor, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, fees, fines, licenses, bonds or taxes required of or imposed against Vendor including but not limited to corporate income tax, sales and excise taxes or amounts levied thereof, and all other of Vendor's costs of doing business. No payments will be made for services rendered or expenses incurred by Vendor other than the Services and/or Deliverables unless such services are approved in advance in writing by the State of Iowa, and Vendor supplies such documentation as the State of Iowa may request with respect to such costs. Invoices shall be sent to:

Office of the Chief Information Officer
1305 E. Walnut St.
Hoover Bldg. – Level B
Des Moines, IA 50319
ocioinvoices@iowa.gov

13.6 Travel and Living Expenses. All travel and living expenses are included in the fixed fee as per Section 13.1 (Compensation). There are no additional fees or expenses for travel or expenses.

13.7 Taxes. Vendor shall be responsible for any sales, service, value-added, use, excise, consumption, and any other taxes and duties on the goods or services it purchases, consumes or uses in providing the Services and Deliverables, if any, including taxes imposed on Vendor's acquisition or use of such goods or services and the amount of tax is measured by Vendor's costs in acquiring such goods or services. The Parties shall reasonably cooperate to more accurately determine each party's tax liability and to minimize such liability to the extent legally permissible.

13.8 All Fees Stated. Except as provided in this Section or in the event of an amendment to this Agreement, there are no other fees or charges to be paid by the State of Iowa for the Services to be provided hereunder.

13.9 Set-off Against Sums Owed by Vendor. In the event that Vendor owes the State of Iowa or any Governmental Entity any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the State of Iowa or the Governmental Entity may set off such sum against any sum invoiced to the State of Iowa by Vendor in the State of Iowa's sole discretion unless otherwise required by law. Any amounts due to the State of Iowa as damages may be deducted by the State of Iowa from any

money or sum payable by the State of Iowa to Vendor pursuant to this Agreement or any other agreement between Vendor and the State of Iowa. The State of Iowa's exercise of rights under this Section 13.9 shall not be considered a breach of this Agreement by the State of Iowa.

13.10 Withholding Payment. In addition to pursuing any other remedy provided herein or by law, the State of Iowa may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the State of Iowa or work stoppage by Vendor with respect to such Service and/or Deliverable, which in the event the State of Iowa determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or (ii) any Service or Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the State of Iowa under this Agreement. The State of Iowa's exercise of its rights to withhold payments shall not be considered a breach of this Agreement by the State of Iowa.

13.11 Audits and Records. Vendor shall maintain accurate, current, and complete books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. If any litigation, claim, negotiation, audit or other action involving the books, documents and records has been started before the expiration of the five-year period, Vendor must retain the records until completion of the action and resolution of all issues which arise from it, or until the end of the above-described five year period, whichever is later. Vendor shall permit the State of Iowa, the Auditor of the State of Iowa, or any 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, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, and records, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement, wherever located. At the request of the State of Iowa, Vendor shall deliver and provide, at no charge, complete copies of such books, documents and records to the State of Iowa or its designee in such formats and within such time period as may be specified by the State of Iowa in its request. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit, examination or delivery of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section. Based on the audit findings, the State of Iowa reserves the right to address Vendor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Agreement require compliance with Iowa Code Chapter 34A, OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, Vendor shall comply with these additional records retention and access requirements:

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

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

(c) Vendor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the State of Iowa.

(d) Vendor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.

14. Intellectual Property.

14.1 Ownership. Vendor hereby assigns, transfers and conveys to the State of Iowa, exclusively and perpetually, all rights, titles, and interests throughout the world it may have or acquire in the Work Product (as defined below), including without limitation all intellectual property or other proprietary rights (including without limitation copyrights, patents rights, trade secret right, rights of reproduction, trademark rights, rights of publicity, and the right to secure registrations, renewals, reissues, and extensions thereof) (collectively “**Intellectual Property Rights**”) therein or otherwise arising from the performance of this Agreement. No rights of any kind in and to the Work Product or Intellectual Property Rights therein are reserved to or by Vendor or will revert to Vendor. Vendor agrees to execute such further documents and to do such further acts, at the State of Iowa’s expense, as may be necessary to perfect, register or enforce the State of Iowa’s ownership of such rights, in whole or in part. If Vendor fails or refuses to execute any such documents, Vendor hereby appoints the State of Iowa as Vendor’s attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on Vendor’s behalf and to execute such documents. To the extent applicable, Vendor shall promptly deliver to the State of Iowa all source code associated with the Work Product. Vendor hereby forever waives and agrees never to assert against the State of Iowa, its successors or licensees any and all Moral Rights (as defined herein) Vendor may have in Work Product even after expiration or termination of this Agreement. “**Moral Rights**” means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country in the world, or under any treaty.

14.2 Work Product and Background Intellectual Property. “**Work Product**” means all Deliverables and all concepts, inventions (whether or not protected under patent laws), works of authorship, information, new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer architecture, artwork, software, programming, applets, scripts, designs, processes, and methods of doing business, and any other media, materials, and other tangible objects produced by Vendor under this Agreement. However, Work Product does not include any intellectual property, including all Intellectual Property Rights therein, which may be contained in Work Product that was developed by Vendor prior to performance or independent of this Agreement (“**Background Intellectual Property**”). Vendor retains all right, title and interest in and to any such Background Intellectual Property. However, to the extent Background Intellectual Property is incorporated into Work Product or required to fully exploit such Work Product, Vendor hereby grants to the State of Iowa a perpetual, irrevocable, fully paid up, royalty free, non-exclusive right and license to use and prepare derivative works of the Background Intellectual Property incorporated into the Work Product or otherwise delivered to the State of Iowa in connection with this Agreement. The State of Iowa may not separately exploit the Background Intellectual Property for the benefit of an unrelated third party such as a competitor of Vendor.

14.3 Use of the State of Iowa Property. The State of Iowa may, but is not required to (unless otherwise set forth in this Agreement or an applicable Statement of Work), provide certain hardware, software, data, databases, office space, security access or other materials, intellectual property, technologies or services to Vendor for the sole purpose of assisting Vendor in the performance of the Services contemplated by this Agreement (“**the State of Iowa Property**”). The State of Iowa may terminate the foregoing license at any time, without cause, on written notice to Vendor. Unless specifically authorized otherwise in the Statement of Work, Vendor shall use the State of Iowa Property only in the form provided by the State of Iowa, without modification unless otherwise agreed to by the State of Iowa. In addition, Vendor will maintain and use the State of Iowa Property in accordance with any written instructions and/or specifications provided by the State of Iowa. Nothing contained herein shall be construed as granting Vendor any right, title, or interest in or to any of the State of Iowa Property.

14.4 Third Party Software. In the event Vendor provides any third party software (the “**Third Party Software**”) to the State of Iowa in connection with this Agreement, the following shall apply: (a) Vendor shall specifically identify in writing all Third Party Software in the applicable Work Order; (b) Vendor shall attach to the relevant Work Order written copies of all third party license agreements applicable to the State of Iowa; and (c) Vendor warrants that (i) it has the right to license any Third Party Software licensed to the State of Iowa under this Agreement; (ii) to the best of Vendor’s knowledge, the Third Party Software does not, and the use of the Third Party Software by the State of Iowa as contemplated by this Agreement will not, infringe any intellectual property rights of any third party; and (iii) unless specifically provided otherwise herein, the State of Iowa shall have no obligation to pay any third party any fees, royalties, or other payments for the State of Iowa’s use of any Third Party Software in accordance with the terms of this Agreement.

15. Confidential Information, Publicity, and Privacy.

15.1 No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor shall not make any media release or other public announcement relating to or referring to this Agreement without the State of Iowa's prior written consent. Vendor shall acquire no right to use, and shall not use, without the State of Iowa's prior written consent, the terms or existence of this Agreement or any Statement of Work, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials, of the State of Iowa or any Governmental Entity, its related or subsidiary companies, parent, employees, directors, shareholders, assigns, successors or licensees: (a) in any advertising, publicity, press release, the customer list, presentation or promotion; (b) to express or to imply any endorsement of Vendor or Vendor's services; or (c) in any manner other than expressly in accordance with this Agreement.

15.2 Confidential Information. "Confidential Information" means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a "Disclosing Party") to the other party (a "Receiving Party") that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. The State of Iowa's Confidential Information shall also include the State of Iowa's the Data (as defined below). Confidential Information does not include any information that: (a) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (b) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (c) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (d) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (e) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (f) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (g) is disclosed by the Receiving Party with the written consent of the Disclosing Party. "Data" means any and all data provided by, on behalf of, or for the benefit of the State of Iowa, including (i) all non-public information and data provided to or accessed by Vendor, (ii) Social Security or other government-issued identification numbers, medical or health information, account security information, financial account information, credit/debit/gift or other payment card information, account passwords, intellectual property, and sensitive personal data as defined under any law, statute, directive, or regulation (including any and all legislative and/or regulatory amendments or successors thereto) regarding privacy, data protection, information security obligations and/or the processing of personal data.

15.3 Vendor's Treatment of Confidential Information. Vendor and its employees, agents, approved contractors and subcontractors may have access to the State of Iowa's Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by the State of Iowa ("State Property") to the extent necessary to carry out its responsibilities under the Agreement. Such State Property shall at all times remain the property of the State. Vendor shall hold any and all State Property it obtains in strictest confidence and will use and permit use of State Property solely for the purposes of this Agreement. Without limiting the foregoing, Vendor shall use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of State Property as the State of Iowa employs with respect to its own State Property of a like importance. Vendor may disclose or provide access to its responsible employees who have a need to know and may make copies of State Property only to the extent reasonably necessary to carry out its obligations hereunder. Vendor will designate one individual who shall remain the responsible authority in charge of all State Property collected, used, or disseminated by Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors must execute confidentiality or non-disclosure agreements to obtain access to certain State Property. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any State Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by the State of Iowa to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during

the term of this Agreement or thereafter. Vendor agrees to return any and all State Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of the State of Iowa. In the event that Vendor receives a request for access to any State Property, Vendor shall immediately communicate such request to the State of Iowa for consideration and handling. All State of Iowa Confidential Information and Data shall be stored and maintained in accordance with the terms of the Google Subcontract. Vendor warrants that it will not transmit or make available any of the State of Iowa's Confidential Information, intellectual property, or Data (as defined in Section 15.2) to any entity or individual outside the United States without prior written approval by the State of Iowa of such transmittal to an entity or person outside of the United States.

15.4 The State of Iowa's Treatment of Confidential Information. Except as provided or contemplated herein, and subject to applicable state, federal, and/or international laws, rules or regulations (including, without limitation, Iowa Code Chapter 22, 11 Iowa Admin. Code 4, and any administrative rules adopted by the State of Iowa), the State of Iowa shall not intentionally disclose Confidential Information to a third party (excluding Governmental Entities) without the prior written consent of Vendor. Notwithstanding the foregoing, the State of Iowa may disclose Vendor's Confidential Information: (a) pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative or regulatory processes; (b) pursuant to any applicable laws, rules, or regulations; (c) if the State of Iowa determines that such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules and regulations; or (iv) if the State of Iowa determines that Vendor has not provided or is unwilling to provide facts sufficient to enable the State of Iowa to make a determination whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rules and regulations. In such event, the State of Iowa shall provide prompt notice to Vendor of the circumstances giving rise to the State of Iowa's disclosure. Vendor acknowledges that the State of Iowa is subject to and required to comply with Iowa Code Chapter 22 and other laws, rules and regulations governing public records. If a request is made to view or otherwise access Vendor's Confidential Information pursuant to such laws, rules or regulations, the State of Iowa will promptly notify Vendor of the request.

15.5 Non-Exclusive Equitable Remedy. Vendor acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may result in irreparable harm to the State of Iowa, and therefore, that upon any such breach or any threat thereof, the State of Iowa will be entitled to appropriate equitable and injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section 15 (Confidential Information, Publicity, and Privacy) will constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement in the exclusive discretion of the State of Iowa.

16. **Communication Systems and Access to Information.** During the Term, Vendor may receive access to the State of Iowa's computers and electronic communications systems ("Systems"), including but not limited to voicemail, email, user databases, and internet and intranet systems. Such Systems are intended for legitimate use related to the State of Iowa's business. Vendor acknowledges that Vendor does not have any expectation of privacy as between Vendor and the State of Iowa in the use of or access to the State of Iowa's Systems and that all communications made with such Systems or equipment by or on behalf of Vendor are subject to the State of Iowa's scrutiny, use and disclosure, in the State of Iowa's discretion. The State of Iowa reserves the right to monitor, review, audit, intercept, access, archive and/or disclose materials sent over, received by or from, or stored in any of its electronic Systems. This includes, without limitation, email communications sent by users across the internet and intranet from and to any domain name owned or operated by the State of Iowa. This also includes, without limitation, any electronic communication System that has been used to access any of the State of Iowa's Systems. Vendor further agrees that Vendor will use all appropriate security, such as, for example, encryption and passwords, to protect the State of Iowa's Confidential Information from unauthorized disclosure (internally or externally) and that the use of such security does not give rise to any privacy rights in the communication as between Vendor and the State of Iowa. The State of Iowa reserves the right to override any security passwords to obtain access to voicemail, email, computer (and software or other applications) and/or computer disks on the State of Iowa's Systems. Vendor also acknowledges that the State of Iowa reserves the right, for any business purposes, to search all work areas (for

example, offices, cubicles, desks, drawers, cabinets, computers, computer disks and files) and all personal items brought onto the State of Iowa property or used to access the State of Iowa Information or Systems.

17. Security.

17.1 Unauthorized Access. In the course of furnishing the Services, Vendor shall not access, and shall not permit its personnel or entities within its control to access, the State of Iowa's Systems without the State of Iowa's express written authorization. Such written authorization may subsequently be revoked by the State of Iowa at any time in its sole discretion. Further, any access shall be consistent with, and in no case exceed the scope of, any such authorization or third party systems, without (a) using only a remote access method approved in writing and in advance by the given by the State of Iowa. All the State of Iowa authorized connectivity or attempted connectivity to the State of Iowa's Systems shall be only through the State of Iowa's security gateways and/or firewalls, and in conformity with applicable the State of Iowa security policies.

17.2 Without limiting the generality of the foregoing, Vendor and Vendor's subcontractors shall comply with state and federal data security and privacy statutes, regulations and other laws relating to data security and privacy. Vendor further covenants that Vendor and its personnel and subcontractors will ensure that all Deliverables including, without limitation, the Implemented System, Software, website will at all times comply with all applicable state and federal IT standards, policies and guidelines, including, but not limited to those relating to security, internet and the web, and data backup, and the Additional State of Iowa Security Terms, attached hereto as Exhibit E (Additional State of Iowa Security Terms). Vendor acknowledges and agrees that it will be subject to and bound by all of the terms and provisions set forth in Exhibit E and shall require and cause any subcontractor used by Vendor in connection with this Agreement to agree to be subject to and bound by such terms and provisions. In addition, Vendor covenants that Vendor and its personnel will ensure that all networks, servers, computer systems, hardware, IT infrastructure and other hardware on which the Implemented System, Software, Deliverables, Data and any websites are hosted, installed, operated, processed, stored or otherwise located, comply with all such State and federal IT standards, policies and guidelines and with state and federal data security and privacy statutes, regulations and other laws relating to data security and privacy. Vendor and Vendor's personnel and subcontractors shall comply with the State of Iowa's security regulations and procedures, including any procedure that the State of Iowa's personnel, contractors and consultants are normally asked to follow. Vendor agrees to cooperate fully and to provide any assistance necessary to the State of Iowa in the investigation of any security breaches that may involve or affect Vendor or Vendor's personnel or subcontractors, and the Implemented System, the Systems, Software, Deliverables or Data.

17.3 Security Regulation; Cooperation. Vendor and Vendor's personnel shall comply with the State of Iowa's security regulations including any procedure which the State of Iowa's personnel, contractors and consultants are normally asked to follow. Vendor agrees to cooperate fully and to provide any assistance necessary to the State of Iowa in the investigation of any security breaches that may involve Vendor or Vendor's personnel.

17.4 Vendor Systems. Vendor shall be solely responsible for all systems Vendor uses to access the State of Iowa Systems. Vendor shall ensure that its systems include up-to-date anti-viral software to prevent viruses from reaching the State of Iowa Systems through Vendor's systems. Vendor shall prevent unauthorized access to the State of Iowa Systems through the Vendor systems. Further, Vendor shall provide the State of Iowa with the full name of each individual who accesses State of Iowa Systems through Vendor's systems including the phone number at which the individual may be reached and ensure that individuals are following industry best practices for maintaining information security. All access to the State of Iowa systems must occur through a secured connection and all State of Iowa data shall be transmitted via a secure network.

17.5 Business Associate Agreements and Non-Disclosure Agreements. Vendor agrees that it will execute any Business Associate Agreement or Non-Disclosure Agreement required by the State of Iowa or any Governmental Entity in connection with the provision of Services and/or Deliverables under this Agreement.

17.6 Disaster Recovery/Business Continuity. Vendor shall maintain a business continuity plan and a disaster recovery plan (collectively the "**DR/BC Plan**"), and implement such plan in the event of any unplanned interruption to the Services. Vendor shall actively test, review, and update the DR/BC Plan on at

least an annual basis. In any event, any future updates or revisions to the DR/BC Plan shall be no less protective than the plan in effect as of the Effective Date. Vendor shall maintain disaster avoidance procedures designed to safeguard the State of Iowa's Confidential Information and the data processing capability, and availability of the Services, throughout the Term. Vendor shall immediately notify the State of Iowa of any disaster or other event in which the DR/BC Plan is activated. Without limiting Vendor's obligations under this Agreement, whenever a disaster causes Vendor to allocate limited resources between or among Vendor's customers, the State of Iowa shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 23.7 (Force Majeure) shall not limit Company's obligations under this Section 17.6 (Disaster Recovery/Business Continuity).

17.7 Security Audits. During the Term, the State of Iowa or its third party designee may, but is not obligated to, perform audits of Vendor environment, including unannounced penetration and security tests, as it relates to the receipt, maintenance, use or retention of the State of Iowa's Confidential Information. Vendor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

17.8 Notification of Breach of Data Security and Remedies. Vendor will notify the State of Iowa within two (2) hours of Vendor's discovery of any actual or suspected breach of confidentiality, privacy or security with regard to Confidential Information, and any breach of Vendor's data security procedures, which includes, but is not limited to instances in which internal personnel access systems in excess of their user rights or use the systems inappropriately, and any Breach of Security as defined in Iowa Code Chapter 715C. In addition to Vendor's other obligations under this Agreement, or under any law or regulation, Vendor agrees to remedy promptly any such breach and to fully cooperate with the State of Iowa in resolving such breach and mitigating any damage from such breach at Vendor's cost. At no additional cost, Vendor will fully cooperate with the State of Iowa in investigating the breach, including, but not limited to, the provision of system, application, and access logs, conducting forensics reviews of relevant systems, imaging relevant media, and making personnel available for interview. On notice of any actual or suspected breach, Vendor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to the breach in accordance with industry best practices. In the event any breach of security or confidentiality by Vendor or its agents requires notification to an individual under any applicable laws, the State of Iowa will have sole control over the timing, content, and method of notification and Vendor will promptly, and in no event later than 30 days from the State of Iowa's written request for reimbursement, reimburse the State of Iowa for all costs and expenses incurred as a result of the breach, including but not limited to, notice, print and mailing costs, and the costs of obtaining credit monitoring services and identity theft insurance for the individuals whose personal information was or may have been compromised, and all other mitigation costs and expenses.

18. Indemnification.

18.1 Indemnification. Vendor and its successors and permitted assigns shall indemnify and hold harmless the State of Iowa, Governmental Entities, and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including, but not limited to, any claims related to, resulting from, or arising out of:

- (a) Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading;
- (b) Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors;
- (c) Vendor's performance or attempted performance of this Agreement;

(d) Failure by Vendor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, and federal laws, rules, ordinances and regulations; or Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors;

(e) Any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State;

(f) Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Service and/or Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party;

(g) Any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including, without limitation, any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation or security; or

(h) Any breach (or threatened or claimed breach) of security or other incident affecting any data (including Data), State Property, the Implemented System, or the Systems, or any other event involving unauthorized access to or use of any data (including Data) or the System in accordance with the Google Subcontract.

18.2 Claims. Vendor's obligations under this Section 18 (Indemnification) are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.

18.3 Liability. Vendor shall be liable for any personal injury or damage to property caused by the fault or negligence of Vendor, its officers, directors, employees, agents and approved contractors or subcontractors. In no event shall the State of Iowa or any Governmental Entities be liable for injuries suffered by Vendor, or Vendor's employees, related to the work performed under this Agreement.

18.4 Survival. Vendor's duties as set forth in this Section 18 (Indemnification) shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the State of Iowa or any other Indemnitee

18.5 Additional Remedy for Infringement Claims. If any Deliverable or Service hereunder becomes the subject of an infringement claim under Section 18.1 (Indemnity), or in the State of Iowa's opinion is likely to become the subject of such a claim, then, in addition to paying any damages and fees as required above in Section 18.1 (Indemnification), Vendor shall, at its option and in its sole discretion, either (a) immediately replace or modify the Deliverable or otherwise perform the Services, providing not less than the functionalities of the original Deliverable or Services to make them non-infringing or cure any claimed misuse of another's intellectual property or (b) immediately procure for the State of Iowa the right to continue using the Deliverable or Service pursuant to this Agreement. Any costs associated with implementing either of the above alternatives will be borne by Vendor. If Vendor fails to provide one of the foregoing remedies within forty-five (45) days of notice of the claim (and such time has not been extended by the State of Iowa in writing), Vendor shall refund to the State of Iowa all sums paid by the State of Iowa under this Agreement for the infringing Deliverable or Service.

19. Representations, Warranties, and Remedies.

19.1 Representations and Warranties. Vendor represents that (a) Vendor has the full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein, and Vendor's performance of this Agreement does not violate or conflict with any agreement to which

Vendor is a party; (b) the Services will be performed in a professional manner consistent with the level of care, skill, practice and judgment exercised by other professionals in performing Services of a similar nature under similar circumstances by personnel with requisite skills, qualifications and licenses needed to carry out such work; (c) all Services and Deliverables will be of original development by Vendor; (d) all Services and Deliverables shall have no material Deficiencies and shall materially conform to the Specifications and requirements set forth in this Agreement, and in the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable Specification shall be the generally accepted industry standard; (e) Vendor is not in arrears with respect to the payment of any monies due and owing the State of Iowa or other Governmental Entity thereof, including but not limited to the payment of taxes and employee benefits; and (f) there is no pending or threatened litigation that would have a material adverse impact on its performance under the Agreement. In the event Vendor is unable to perform or provide the Services or Deliverables in accordance with the terms of this Agreement, the applicable Statement of Work, or as otherwise warranted, Vendor shall reimburse the State of Iowa for any fees or compensation paid to Vendor for such Services or Deliverables. Vendor hereby assigns and agrees to deliver to the State of Iowa all representations and warranties received by Vendor from its third party licensors and suppliers.

19.2 Requirements. Vendor represents and warrants that it is fully aware of the State of Iowa's business requirements and intended purposes and uses for the Services and Deliverables as set forth herein and in the RFP, the Services and Deliverables shall satisfy such requirements in all material respects and are fit for such intended purposes and uses, and that all project Documentation will accurately reflect the current operation of any Deliverable(s) to which the Documentation pertains, and the Documentation will enable the State of Iowa to use such Deliverable(s) for their intended purposes.

19.3 Deliverables. Vendor represents and warrants that: (a) all Deliverables, excluding Third Party Software, shall be wholly original with and prepared solely by Vendor; (b) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Services and Deliverables to the State of Iowa hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the State of Iowa without violating any rights of any third party; (c) Vendor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the State of Iowa herein; and (d) the State of Iowa shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

19.4 Intellectual Property. Vendor represents and warrants that the Deliverables (and all intellectual property rights therein and related thereto) and the State of Iowa's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), 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. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables.

19.5 Compliance. Vendor represents, warrants and covenants that the Services and Deliverables comply with and will at all times comply with all applicable federal, state foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Agreement and all applicable requirements of any United States Governmental Entity that provides any funding in connection with this Agreement. Vendor further represents, warrants and covenants that the Deliverables comply with and will at all times comply with Section 508 of the Rehabilitation Act of 1973, as amended, all standards and requirements established by the Architectural and Transportation Barriers Access Board, and the World Wide Web (W3C) Web Accessibility Initiative. Without limiting the foregoing, Vendor covenants that all pertinent Deliverables will pass W3C validation and meet the accessibility standards of 36 C.F.R. § 1194, which implements Section 508 of the Rehabilitation Act of 1973.

19.6 Destructive Mechanisms. Vendor shall not insert into any Deliverables, any Destructive Mechanisms (as defined below). Further, Vendor warrants that at the time any Deliverables are delivered to the State of Iowa they shall not contain, have or utilize a Destructive Mechanism. Vendor shall not invoke such mechanisms at any time, including upon expiration or termination of this Agreement for any reason. For purposes of this Section, "**Destructive Mechanisms**" means computer code that: (a) is designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation

of the Deliverables or any other software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms"); (b) would disable or impair the Deliverables or any other software, firmware, hardware, computer systems or networks in any way where such disablement or impairment is caused by the passage of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (sometimes referred to as "time bombs," "time locks" or "drop dead" devices); (c) would permit Vendor to access the Deliverables or any other software, firmware, hardware, computer systems or networks to cause such disablement or impairment (sometimes referred to as "traps," "access codes" or "trap door" devices); or (d) which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications or otherwise interfere with operations.

19.7 **No Limitation.** All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the State of Iowa, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. Vendor's warranties provided in this Section 19 (Representations, Warranties, and Remedies) are in addition to and not in lieu of any other warranties implied by law or provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the State of Iowa.

19.8 **The State of Iowa's Warranty.** The State of Iowa represents and warrants that, at all times during the Term, the State of Iowa shall have the full power to enter into and perform this Agreement and to make the grant of rights contained herein, and the State of Iowa's performance of this Agreement shall not violate or conflict with any agreement to which the State of Iowa's Office of the Chief Information Officer is a party.

20. Knowledge Transfer and Training.

20.1 **Knowledge Transfer.** The Services shall include knowledge transfer, training, and education activities as set forth in the Tempus Nova Response to State of Iowa RFP 1214005011 Cost Volume and the applicable Statement of Work. Vendor shall provide to the State of Iowa, as part of the knowledge transfer, unlimited access to the computer based training course material through the end of the Term.

20.2 **Training.** As part of the Services, Vendor shall provide the training to the State of Iowa and its personnel, as set forth in the Tempus Nova Response to State of Iowa RFP 1214005011 Cost Volume and applicable Statement(s) of Work at no additional charge to the State of Iowa.

21. Insurance

21.1 **Insurance Requirements.** Vendor shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa, insurance covering its work of the type and in amounts required by this Agreement. Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor's performance of this Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Agreement shall: (a) remain in full force and effect for the entire term of this Agreement; and (b) not be reduced, changed (to the detriment of the State of Iowa or any Governmental Entities), or canceled (without being simultaneously replaced by another policy meeting the requirements of this Section 21 (Insurance)). The State of Iowa shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: "It is hereby agreed and understood that the State of Iowa is named as additional insured, and that the coverage afforded to the State of Iowa under this policy shall be primary insurance. If the State of Iowa has other insurance which is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance." Notwithstanding the foregoing, the requirement that the State of Iowa be named as additional insureds on all policies of insurance shall not apply to Vendor's Workers Compensation Insurance. The State of Iowa will accept a combined Technology Errors and Omissions policy. Such insurance shall (a) cover the liability of Vendor by reason of any actual or alleged error, omission, negligent act or wrongful act of Vendor committed in rendering or failing to render any products or services, and shall specifically

include coverage for liabilities caused by a security breach, breach of privacy, or breach of privacy regulations, including but not limited to unauthorized disclosure of information, unauthorized access, or failure to protect a network security breach; liabilities resulting from the unauthorized release, transmission or publication of private or technical information in Vendor's possession under the scope of this Agreement; (b) include the indemnification of the State of Iowa for any costs and expenses, include the State of Iowa's notification expenses, incurred by the State of Iowa arising out of a security breach, privacy breach or breach of privacy regulations; and (c) if underwritten on a claims made insuring agreement, be maintained for a period of not less than two (2) years after the expiration of this Agreement. In the event Vendor fails to secure and continuously maintain the insurance coverage required under this Agreement, the State of Iowa may charge Vendor, and Vendor shall pay the State of Iowa, (a) the State of Iowa's actual expenses incurred in purchasing similar protection and (b) the value or amount of any claims, actions, damages, liabilities, costs, and expenses paid by the State of Iowa which would not have been paid by the State of Iowa if Vendor had complied with the requirements of this Section.

21.2 Insurance Policies. Unless otherwise requested by the State of Iowa, Vendor shall cause to be issued insurance policies with the coverages set forth below:

<u>Type of Insurance</u>	<u>Limit</u>	<u>Amount</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 million
	Products –	
	Comp/Op Aggregate	\$2 million
	Personal injury	\$1 million
	Each Occurrence	\$1 million
Excess Liability, umbrella form	Each Occurrence	\$5 million
	Aggregate	\$5 million
Technology Errors and Omissions Insurance	Each Occurrence	\$5 million
	Aggregate	\$5 million
Workers Compensation and Employer Liability	As Required by Iowa law	\$1 million

21.3 Claims Provision. All insurance policies required by this Agreement, with the exception of the policy for Errors and Omissions Insurance, must provide coverage on an "occurrence basis" for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy. The policy for Errors and Omissions Insurance will provide coverage on a "claims made" basis, provided however, that such policy includes extended reporting period or tail coverage acceptable to the State of Iowa.

21.4 Certificates of Coverage. At the time of execution of this Agreement, Vendor shall deliver to the State of Iowa certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to this Agreement, certifying that the State of Iowa is named as an additional insured on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the State of Iowa. All certificates of insurance shall be subject to approval by the State of Iowa. The Vendor shall simultaneously with the delivery of the certificates deliver to the State of Iowa one duplicate original of each insurance policy.

21.5 Liability of Vendor. Acceptance of the insurance certificates by the State of Iowa shall not act to relieve Vendor of any obligation under this Agreement. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Vendor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Vendor shall have no claim or other recourse against the State of Iowa for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Vendor. Notwithstanding any other provision of this Agreement, Vendor shall be fully responsible and liable for meeting and fulfilling all of its obligations under Section 21 (Insurance) of this Agreement.

21.6 Waiver of Subrogation Rights. Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State of Iowa. The waiver of subrogation rights shall be

indicated on the certificates of insurance coverage supplied to the State of Iowa for all policies except for the policy for the Errors and Omissions Insurance.

21.7 Filing of Claims. In the event the State of Iowa suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Vendor shall, at the State of Iowa's request, immediately file a proper claim under such policy. Vendor will provide the State of Iowa with proof of filing of any such claim and keep the State of Iowa fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the State of Iowa. Vendor shall pay to the State of Iowa any insurance proceeds or payments it receives in connection with any such claim immediately upon Vendor's receipt of such proceeds or payments.

21.8 Proceeds. In the event the State of Iowa suffers a loss that may be covered under any of the insurance policies required under this Section 21 (Insurance), neither the Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the State of Iowa has fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the State of Iowa all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Agreement.

22. Documents Incorporated.

22.1 Exhibits, Statement(s) of Work and Addenda. All Exhibits, Statement(s) of Work, and Addenda that are referenced herein and appended hereto, or are signed by the Parties on or after the date of this Agreement, are hereby attached hereto:

Exhibit A	Statement(s) of Work
Exhibit B	RFP
Exhibit C	Tempus Nova Response to State of Iowa RFP 1214005011 Tech Volume
Exhibit D	Tempus Nova Response to State of Iowa RFP 1214005011 Cost Volume
Exhibit E	The State of Iowa Security Policy
Exhibit F	The Google Apps for Government via Reseller Terms of Service (TOS)
Exhibit G	Iowa Code Chapter 8A.514 Vouchers – Interest -- Payment Of Claims

22.2 RFP and Vendor's Proposal. The State of Iowa's Request for Proposal #1214005011 ("RFP") and Vendor's proposal dated June 2, 2014, in response to the RFP ("Proposal"), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of Vendor's exceptions, objections or proposed modifications respecting the RFP or any terms associated therewith (collectively "Vendor Exceptions") shall be incorporated into this Agreement unless expressly set forth herein.

22.3 Contractual Obligations. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any Vendor Exceptions shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or the State of Iowa hereunder, unless expressly stated herein.

22.4 Order of Interpretation. In the case of any inconsistency or conflict between the specific provisions of this document, any attached Exhibits, Statement(s) of Work, or Addenda, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the body of this Agreement; second, to any Exhibits, Statement(s) of Work, or Addenda; third, by giving preference to the specific provisions of the RFP; and fourth, by giving preference to the specific provisions of the Proposal (excluding any Vendor Exceptions that are not expressly made a part of this Agreement).

22.5 No Inconsistency. The references to the Parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered or stated in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything

herein to the contrary, the State of Iowa shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the State of Iowa.

23. General Provisions.

23.1 Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all personnel and any other subcontractors of Vendor providing services to the State of Iowa are responsive to the State of Iowa's requirements and requests in all respects.

23.2 Open Records and Electronic Discovery Requests and Record Retention. Vendor will, upon the State of Iowa's request and within any time period specified by the State of Iowa, take all reasonable actions requested by State of Iowa to assist the State of Iowa in complying timely with any request for records, data, or information or materials of any kind that may be made by any person or entity in accordance with applicable public or open records laws (including, without limitation, Iowa Code Chapter 22) or in connection with any subpoena, court order, discovery request, regulatory or criminal investigation or proceeding, or any other matter that may require the State of Iowa to produce or provide data, records, or information of any kind to a third party. Vendor will produce and provide all data, records, information or materials of any kind within the time period set forth in State of Iowa's written request. Vendor will take all steps necessary to ensure that all data will be stored and maintained in its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon State of Iowa's request, take all actions requested by the State of Iowa to assist the State of Iowa in complying with any state or federal record retention requirements, policies, procedures or any requirements of any United States Governmental Entities

23.3 Independent Contractors. Vendor is an independent contractor and is not an agent or employee of, and has no authority to bind, the State of Iowa by contract or otherwise. Vendor will perform the Services under the general direction of the State of Iowa, but Vendor will determine, in Vendor's sole discretion, the manner and means by which the Services are accomplished, subject to the requirement that Vendor will at all times comply with applicable law and with the State of Iowa's reasonable instructions. Further, it is not the intention of this Agreement or of the parties to confer a third party beneficiary right of action upon any third party or entity whatsoever, and nothing in this Agreement will be construed so as to confer upon any third party or entity other than the parties hereto a right of action under this Agreement or in any manner whatsoever. On or before the Effective date, Vendor must deliver to the State of Iowa a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification (TIN)).

23.4 Employment Taxes and Benefits. Vendor warrants that the Services will be provided by an employee of Vendor. Vendor agrees to pay all necessary employment taxes required by law. Vendor also agrees to report employees' income and withhold all required taxes from such income, as may be required by law. Employees of Vendor will not be entitled to receive any vacation or illness payments, or to participate in any plans, arrangements, or distributions by the State of Iowa pertaining to any bonus, stock option, profit sharing, insurance or similar benefits for the State of Iowa employees. In addition, Vendor agrees that it will provide for Workers' Compensation, unemployment, and all other coverage required under applicable local, state or federal law. Vendor further agrees that it will indemnify and hold harmless the State of Iowa and pay any damages and fees as required above in Section 18.1 (Indemnification) from and against any claim asserted against the State of Iowa for Vendor's failure to comply with its obligations under this paragraph.

23.5 Assignment. Vendor may not assign, transfer or delegate its rights or obligations under this Agreement without the prior written consent of the State of Iowa. The State of Iowa reserves the right to assign its rights and obligations hereunder, as it deems appropriate.

23.6 Compliance with Iowa Code Chapter 8F. If this Agreement is subject to the provisions of Iowa Code chapter 8F, the Vendor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Agreement. The Vendor shall provide the State of Iowa with any compliance documentation, including but not limited to certifications, received from subcontractors by the Vendor.

23.7 Force Majeure. If either Party cannot perform any of its obligations because of any act of God, accident, strike, court order, fire, riot, war, or any other cause not within the party's reasonable control and could not be avoided through the exercise of reasonable care and diligence (a "Force Majeure Event"), then the non-performing Party will: (a) immediately notify the other Party; (b) take reasonable steps to resume

performance as soon as possible; and (c) not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues for a period of five (5) business days, the State of Iowa may terminate this Agreement by providing written notice to Vendor. A "Force majeure Event" does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of Vendor or any subcontractor used by Vendor; claims or court orders that restrict Vendor's ability to deliver the Services and/or Deliverables contemplated by this Agreement; strikes; labor unrest; supply chain disruptions; Internet outages; viruses; malware, Trojan Horses; worms; cancelbots; denial of service attacks; hacking; intrusions; security breaches; or any other similar item, malicious code or action that might interfere with or adversely affect the Implemented System, the System, Software, any servers, computer hardware, devices or IT infrastructure, data (including Data), Services and/or Deliverables.

23.8 Governing Law. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, 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. Vendor irrevocably: (a) 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; (b) 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 (c) waives any objection to such jurisdiction based on forum non conveniens or otherwise.

23.9 Sovereign Immunity. Nothing in this agreement shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State of Iowa, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. The State of Iowa specifically retains and reserves 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.

23.10 Contract Compliance Audit. Vendor agrees that the State of Iowa or a representative of its selection may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or expiration of this Agreement to determine whether or not the Vendor is complying with the terms of this Agreement, criteria established for access to State Property, State and federal laws regarding Confidential Information, and any other applicable laws and regulations. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by the State of Iowa or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

23.11 Repayment Obligation. In the event that any State 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 Vendor will be liable to the State of Iowa (or any other applicable Governmental Entity) for the full amount of any claim disallowed (or the amount of funds expended in violation of such applicable laws) and for all related penalties incurred. If the State of Iowa concludes that Vendor has been paid for any cost that is unallowable, unallocable, or unreasonable under this Agreement, Vendor will be liable to the State of Iowa for such cost. The Vendor shall pay to the State of Iowa all amounts for which the Vendor is liable under this Section within ten (10) business days of receiving the State of Iowa written demand or written notice. The State of Iowa may withhold any payment under this Agreement if Vendor fails to timely make any payment required by this Section. The requirements of this Section shall apply to the Vendor, its affiliate and subcontractors.

23.12 Waiver/Severability. Any waiver, in whole or in part, of any provision of this Agreement will not be considered to be a waiver of any other provision. If any term of this Agreement is found to be unenforceable or invalid for any reason, all other terms will remain in full force and effect.

23.13 Authority. Each party represents and warrants that it has taken all requisite action to approve execution, delivery and performance of this Agreement and that this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.

23.14 Conflict of Interest. The Vendor represents, warrants, and covenants that no relationship exists or will exist during the Agreement period between the Vendor and the State of Iowa that is a conflict of interest. No employee, officer or agent of the Vendor 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 Chapter 68B shall apply to this Agreement. If a conflict of interest is proven to the State of Iowa, the State of Iowa may terminate this Agreement and the Vendor shall be liable for any excess costs to the State of Iowa as a result of the conflict of interest. The Vendor 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 Vendor shall report any potential, real, or apparent conflict of interest to the State of Iowa.

23.15 Construction. All headings used in this Agreement are for reference purposes only and are not part of this Agreement. Neither this Agreement nor any Statement of Work will be construed in favor or against either party by reason of the authorship of any provisions hereof.

23.16 Entire Agreement. This Agreement, as to its subject matter, exclusively and completely states the rights, duties and obligations of the parties and supersedes all prior and contemporaneous representations, letters, proposals, discussions and understandings by or between the parties. This Agreement may only be amended in a writing signed by an authorized representative of each of the parties. With respect to the State of Iowa, the authorized representative is the Chief Information Officer of the State of Iowa. The parties, by their representatives signing below, agree with the terms of this Agreement.

23.17 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by an internationally recognized courier service or, if between Parties located in the United States, mailed by electronic mail (email) with a written acknowledgement of receipt, U.S. registered or certified mail, return receipt requested, postage prepaid, to the Parties at the addresses set forth herein. All notices under this Agreement that are addressed as provided in this Section, (a) if delivered personally or by a nationally recognized courier service, will be deemed given upon delivery, or (b) if delivered by mail or email in the manner described above, will be deemed given on the fifth (5th) business day after the day it is deposited in a regular depository of the United States mail. All notices shall be sent by certified mail, email or by personal delivery, to the following addresses:

If to Vendor:
Tempus Nova, Inc.
1550 Larimer Street, Suite 217
Denver, CO 80202
Attn: Didi Dellanno, CEO
didi@tempusnova.com

If to the State of Iowa:
Office of the Chief Information Officer
Hoover Bldg. – Level B
Des Moines, IA 50319
Attn: Matt Behrens, Deputy CIO

Either Party may change its address or designee for notification purposes by giving notice to the other of the new address or designee and the date upon which such change will become effective.

23.18 Agreement Drafted By All Parties. This Agreement is the result of arm's length negotiations between the Parties and shall be construed to have been drafted by all Parties such that any ambiguities in this Agreement shall not be construed against either Party.

23.19 Electronic Signatures and Facsimiles – Binding; Counterparts. This Agreement may be accepted in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent) and Vendor's acceptance will be deemed binding between the parties. Neither party will (a) contest the validity or enforceability of this Agreement, including under any applicable statute of frauds, because they were accepted and/or signed in electronic form; and (b) contest the validity or enforceability of a signed facsimile copy of this Agreement on the basis that it lacks an original handwritten signature. Facsimile signatures shall be considered valid signatures as of the date hereof. Computer maintained records of a party when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement.

* * * * *

Remainder of Page Intentionally Left Blank. Signatures on Following Page

IN WITNESS WHEREOF, the Parties duly authorized representatives have executed this Agreement to become effective as of the Effective Date.

Tempus Nova, Inc. ("Vendor")

The State of Iowa

By: 

By: 

Name: Didi Dellanno

Name: Von Wollentz

Title: President & CEO

Title: CIO

Date: June 30, 2015

Date: 6/30/2015

By: _____

Name: _____

Title: _____

Date: _____