

STRATEGIC SOURCING RFQ ONLY

STATE OF IOWA TERMS AND CONDITIONS

APRIL 2006

A. Definitions and General Information

1. **Definitions.** Capitalized words used in these Base Contract Terms and Conditions shall be defined as set forth in the RFQ.
2. **Availability of Contract to Other Entities.** All other agencies of the State of Iowa, Independent Purchasing Authorities and all political subdivisions of the State of Iowa may make purchases pursuant to the Base Contract and/or Ancillary Contracts. A Buyer may include additional contractual requirements and the Supplier agrees to be bound by the additional requirements if it accepts the Purchase Instrument.
3. **Priority of Contract Provisions.** If there is a conflict between the terms and conditions of the Base Contract and Ancillary Contract, the Ancillary Contract shall govern the purchase. Any pre-printed contract terms and conditions included on Supplier's forms or invoices shall be null and void.
4. **Reporting Requirements.** The Supplier shall keep a record of the purchases made pursuant to the Base Contract and/or Ancillary Contracts and shall submit a report as specified in the RFQ to the Lead Agency. The report shall identify all of the individual Buyers and the quantities purchased pursuant to the Base Contract and Ancillary Contracts during the reporting period.

B. Duration of Contract

The term of the Contract shall begin and end on the dates specified in the RFQ, unless terminated earlier in accordance with the applicable terms and conditions. The IPA may exercise any applicable extension by giving the Supplier written notice of the extension decision at least sixty (60) days prior to the expiration of the initial term or renewal term.

C. Description of Goods and/or Services

1. **Specifications in Bidding Documents.** The Supplier shall provide goods and/or services that comply with the specifications contained in the RFQ identified by bid number in the Contract Agreement Form(s) of the Base Contract and/or Ancillary Contracts.
2. **Product Shipment and Delivery.** All products shall be shipped F.O.B. destination. Destination shall be the location(s) specified in the Purchase Instrument. All items shall be at the Supplier's risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Supplier to remedy without cost to the IPA, regardless of the when the hidden damage is discovered.
3. **Non-Exclusive Rights.** The Contract is not exclusive. Eligible Buyers reserve the right to select other contractors to provide goods and services similar or identical to goods and services described in the Contract during the term of the Contract.
4. **No Minimums Guaranteed.** The Contract does not guarantee any minimum level of purchases.

D. Compensation

1. **Pricing.** The Supplier will be paid for the goods and services sold pursuant to the Base Contract and/or Ancillary Contracts in accordance with the final pricing documents included as an attachment to the Contract Agreement Form. Unless clearly stated otherwise in the Contract Agreement Form, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to, freight, insurance, and customs duties.

2. **Billings.** The Supplier shall submit, on a regular basis an invoice for goods and services supplied to the Buyer under the Base Contract and/or Ancillary Contracts at the billing address specified in the Purchase Instrument. The invoice shall comply with all applicable rules concerning payment of such claims. The Buyer shall pay all approved invoices in arrears and in accordance with applicable provisions of Iowa law.

Unless otherwise agreed in writing by the parties, the Supplier shall not be entitled to receive any other payment or compensation from the Buyer for any goods or services provided by or on behalf of the Supplier under the Base Contract and/or Ancillary Contracts. The Supplier shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Base Contract and/or Ancillary Contracts.

3. **Delay of Payment Due to Supplier's Failure.** If the Buyer in good faith determines that the Supplier has failed to perform or deliver any service or product as required by the Base Contract and/or Ancillary Contracts, the Supplier shall not be entitled to any compensation under the Contracts until such service or product is performed or delivered. In this event, the Buyer may withhold that portion of the Supplier's compensation which represents payment for services or products that were not performed or delivered.
4. **Set-Off Against Sums Owed by the Supplier.** In the event that the Supplier owes the Buyer and/or the State any sum under the terms of the Base Contract and/or Ancillary Contracts, pursuant to any judgment, or pursuant to any law, the Buyer and/or the State may set off the sum owed to the Buyer and/or the State against any sum owed by the Buyer and/or the State to the Supplier in the Buyer's sole discretion, unless otherwise required by law. The Supplier agrees that this provision constitutes proper and timely notice under the law of setoff.

E. Termination

1. **Immediate Termination by an IPA.** An IPA may terminate its Contract for any of the following reasons effective immediately without advance notice:
 - a. In the event the Supplier is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification will result in immediate termination of the Base Contract and/or Ancillary Contracts effective as of the date on which the license or certification is no longer in effect;
 - b. The IPA determines that the actions, or failure to act, of the Supplier, its agents, employees or subcontractors have caused, or reasonably could cause, a buyer's life, health or safety to be jeopardized;
 - c. The Supplier fails to comply with confidentiality laws or provisions;
 - d. The Supplier furnished any statement, representation or certification in connection with the Base Contract and/or Ancillary Contracts or the bidding process which is materially false, deceptive, incorrect or incomplete.
2. **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for an IPA to declare the Supplier in default of its obligations under its Contract.
 - a. The Supplier fails to deliver or has delivered nonconforming goods or services or fails to perform, to the IPA's satisfaction, any material requirement of its Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Supplier;
 - b. The IPA determines that satisfactory performance of its Contract is substantially endangered or that a default is likely to occur;
 - c. The Supplier fails to make substantial and timely progress toward performance of the Base and/or Ancillary Contracts;
 - d. The Supplier becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Supplier terminates or suspends its business; or

- the IPA reasonably believes that the Supplier has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- e. The Supplier has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Base Contract and/or Ancillary Contracts;
 - f. The Supplier has engaged in conduct that has or may expose the IPA or the State to liability, as determined in the IPA's sole discretion; or
 - g. The Supplier has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the IPA, the State, or a third party.
- 3. Notice of Default.** If there is a default event caused by the Supplier, the IPA shall provide written notice to the Supplier requesting that the breach or noncompliance be remedied within the period of time specified in the IPA's written notice to the Supplier. If the breach or noncompliance is not remedied by the date of the written notice, the IPA may:
- a. Immediately terminate its Contract without additional written notice; and/or,
 - b. Procure substitute goods or services from another source and charge the difference between the current contract and the substitute contract to the defaulting Supplier; and/or,
 - c. Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.
- 4. Termination upon Notice.** Following 90 days' written notice, the IPA may terminate its Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Supplier. Following termination upon notice, the Supplier shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the Contract to the IPA or a Buyer up to and including the date of termination.
- 5. Termination Due to Lack of Funds or Change in Law.** The IPA shall have the right to terminate its Contract without penalty by giving 30 days' written notice to the Supplier as a result of any of the following:
- a. Adequate funds are not appropriated or granted to allow the IPA to operate as required and to fulfill its obligations under the Contract;
 - b. Funds are de-appropriated or not allocated or if funds needed by the IPA, at the IPA's sole discretion, are insufficient for any reason;
 - c. The IPA's or Buyer's authorization to operate is withdrawn or there is a material alteration in the programs administered by the IPA;
 - d. The IPA's or Buyer's duties are substantially modified.
- 6. Remedies of the Supplier in Event of Termination by the IPA.** In the event of termination of the Contract for any reason by the IPA, the IPA and any Buyers shall pay only those amounts, if any, due and owing to the Supplier for goods and services actually rendered up to and including the date of termination of the Contract and for which the IPA or any Buyer is obligated to pay pursuant to its Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Supplier's claim. This provision in no way limits the remedies available to the IPA or any Buyer under the Contract in the event of termination. The IPA and the Buyers shall not be liable for any of the following cost:
- a. The payment of unemployment compensation to the Supplier's employees;
 - b. The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
 - c. Any costs incurred by the Supplier in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
 - d. Any taxes that may be owed by the Supplier in connection with the performance of the Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

7. **The Supplier's Termination Duties.** Upon receipt of notice of termination or upon request of the IPA, the Supplier shall:
- a. Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the IPA may require.
 - b. Immediately cease using and return to the IPA, any personal property or materials, whether tangible or intangible, provided by the IPA to the Supplier.
 - c. Comply with the IPA's instructions for the timely transfer of any active files and work product produced by the Supplier under the Contract.
 - d. Cooperate in good faith with the IPA, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Supplier.
 - e. Immediately return to the IPA any payments made by the IPA for goods and services that were not delivered or rendered by the Supplier.

F. Confidential Information

1. **Access to Confidential Data.** The Supplier's employees, agents and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out its responsibilities under the Contract. The Supplier shall presume that all information received pursuant to the Base and/or Ancillary Contracts is confidential unless otherwise designated by the State. If it is reasonably likely the Supplier will have access to the State's confidential information:
- a. The Supplier shall provide to the IPA a written description of its policies and procedures to safeguard confidential information;
 - b. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
 - c. The Supplier must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Supplier in connection with the performance of the Contract; and
 - d. The Supplier shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.

The private or confidential data shall remain the property of the State at all times.

2. **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the State, either during the period of the Contract or thereafter. Any data supplied to or created by the Supplier shall be considered the property of the State. The Supplier must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the State.
3. **Subpoena.** In the event that a subpoena or other legal process is served upon the Supplier for records containing confidential information, the Supplier shall promptly notify the IPA or the impacted Buyer and cooperate with the IPA or the Buyer in any lawful effort to protect the confidential information.
4. **Reporting of Unauthorized Disclosure.** The Supplier shall immediately report to the IPA or the impacted Buyer any unauthorized disclosure of confidential information.
5. **Survives Termination.** The Supplier's confidentiality obligation under the Base Contract and/or Ancillary Contracts shall survive termination of the Contracts.

G. Indemnification

1. The Supplier agrees to indemnify and hold harmless the State of Iowa, the IPAs, and the Buyers, its/their officers, employees, volunteers and agents (collectively the indemnified

parties) from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the indemnified parties, related to or arising from:

- a. Any breach of the Contract;
 - b. Any negligent, intentional or wrongful act or omission of the Supplier or any employee, agent or subcontractor utilized or employed by the Supplier;
 - c. Any failure of goods to comply with applicable specifications, warranties, and certifications under the Contract;
 - d. The negligence or fault of the contractor in design, testing, development, manufacture, or otherwise with respect to the goods or any parts thereof provided under the Contract;
 - e. Claims, demands, or lawsuits that, with respect to the goods or any parts thereof, allege product liability, strict product liability, or any variation thereof;
 - f. The Supplier's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Supplier;
 - g. Any failure by the Supplier to comply with the Compliance with the Law provision of the Base Contract and/or Ancillary Contracts;
 - h. Any failure by the Supplier to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Supplier to conduct business in the State of Iowa or United States;
 - i. Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
 - j. Any failure by the Supplier to adhere to the confidentiality provisions of the Contract.
2. **Survives Termination.** The indemnification obligation of the Supplier shall survive termination of the Contract.

H. Insurance

The Supplier shall provide insurance (if required) in accordance with the terms of the RFQ.

I. Performance Bond

The Supplier shall provide a performance bond (if required) in accordance with the terms of the RFQ.

J. Warranties

1. **Construction of Warranties Expressed in the Contract with Warranties Implied by Law.** All warranties made by the Supplier and/or subcontractors in all provisions of the Contract and the Supplier's Bid Proposal, whether or not the Contract specifically denominates the Supplier's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Supplier's affirmation or promise, or is created by a description of the materials, goods and services to be provided, or by provision of samples to the State, the IPAs, or the Buyers 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, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Supplier. The provisions of this Section apply during the term of the Contract and any extensions or renewals thereof.
2. **Warranty – Nonconforming Goods.** All goods delivered by Supplier to the IPA and any Buyers shall be free from any defects in design, material, or workmanship. If any goods offered by the Supplier are found to be defective in material or workmanship, or do not conform to Supplier's warranty, the IPA or the Buyer shall have the option of returning,

repairing, or replacing the defective goods at Supplier's expense. Payment for goods shall not constitute acceptance. Acceptance by the IPA or the Buyer shall not relieve the Supplier of its warranty or any other obligation under the Contract.

3. **Compliance with Federal Safety Acts.** Supplier warrants and guarantees to the State, the IPAs and the Buyers that the goods provided under the Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget A-110 Appendix A and the Anti-Kickback Act of 1986.
4. **Concepts, Materials, and Goods Produced.** Supplier represents and warrants that all the concepts, materials, goods and services produced, or provided to the State, the IPAs, and the Buyers pursuant to the terms of the Contract shall be wholly original with the Supplier or that the Supplier has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, goods and services. The Supplier represents and warrants that the concepts, materials, goods and services and the IPA's use of same and the exercise by the IPA of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contract to the Supplier to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Supplier represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by the Contract.
5. **Conformity with Contractual Requirements.** The Supplier represents and warrants that the goods and services provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.
6. **Authority to Enter into Contract.** The Supplier represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State, the IPAs, and the Buyers.
7. **Obligations Owed to Third Parties.** The Supplier represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Supplier pursuant to the Contract are or will be fully satisfied by the Supplier so that the State, the IPAs, and the Buyers will not have any obligations with respect thereto.
8. **Title to Property.** The Supplier represents and warrants that title to any property assigned, conveyed or licensed to the State, the IPAs, and the Buyers is good and that transfer of title or license to the State, the IPAs, and the Buyers is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.
9. **Industry Standards.** The Supplier represents and expressly warrants that all aspects of the goods and services provided or used by it shall at a minimum conform to the standards in the Supplier's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.

K. Product Recall

In the event that any of the goods are found by the Supplier, the IPA, a Buyer, or any governmental agency or court having jurisdiction to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such goods be reworked or recalled, the Supplier will promptly communicate all relevant facts to the IPA and all Buyers and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the IPA or a Buyer from taking such action as may be required of it under any such law or regulation. The Supplier shall perform all

necessary repairs or modifications at its sole expense except to any extent that the Supplier and the IPA or a Buyer shall agree to the performance of such repairs by the IPA or a Buyer upon mutually acceptable terms.

L. Contract Administration

- 1. Incorporation of Documents.** The parties acknowledge that the Contract consists of these contract terms and conditions as well as the RFQ and the Bid Proposal. The RFQ and the Supplier's Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by a Supplier to the RFQ requirements shall be incorporated by reference into the Contract unless the Supplier has explicitly accepted the Supplier's objection or amendment in writing. If there is a conflict between the Contract, the RFQ and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFQ; (3) the Bid Proposal.
- 2. Intent of References to Bid Documents.** The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the RFQ and the Supplier's Bid Proposal. The failure of the parties to make reference to the terms of the RFQ or the Supplier's Bid Proposal in this document shall not be construed as creating a conflict and will not relieve the Supplier of the contractual obligations imposed by the terms of the RFQ and the Supplier's Bid Proposal. The contractual obligations of the Buyer cannot be implied from the Supplier's Bid Proposal.
- 3. Compliance with the Law.** The Supplier, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Supplier, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Contract. The Supplier may be required to submit its affirmative action plan to the Department of Management to Comply with the requirements of 541 IAC chapter
- 4. Amendments.** The Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by the parties.
- 5. Third-Party Beneficiaries.** There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the IPA, the State of Iowa, and the Supplier.
- 6. Choice of Law and Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall solely be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, in the Iowa State district court where the Buyer legally resides, or in the United States District Court for the Northern or Southern District of Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the IPA, individual Buyers, or the State.
- 7. Assignment and Delegation.** The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the IPA. For the purpose of construing this clause, a transfer of a controlling interest in the Supplier shall be considered an assignment.
- 8. Use of Third Parties.** The IPA acknowledges that the Supplier may contract with third parties for the performance of any of the Supplier obligations under the Contract. All subcontracts shall be subject to prior approval by the IPA. The Supplier may enter into these contracts to complete the project provided that the Supplier remains responsible for all goods delivered and services performed under the Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Supplier under the Contract shall also apply to the subcontractors.

Any contract with a subcontractor must also preserve the rights of the IPA. The IPA shall have the right to request the removal of a subcontractor from the Contract for good cause.

- 9. Integration.** The Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.
- 10. Headings or Captions.** The paragraph headings or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
- 11. Not a Joint Venture.** Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and services and acting toward the mutual benefits expected to be derived herefrom. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.
- 12. Joint and Several Liability.** If the Supplier is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.
- 13. Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the IPA and the Supplier for the goods and services provided in connection with the Contract.
- 14. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the IPA and the Supplier, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- 15. Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Contract Agreement Form at the address specified on the forms. Each such notice shall be deemed to have been provided:
 - a. At the time it is actually received; or,
 - b. Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
 - c. Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

- 16. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 17. Severability.** If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law.

- 18. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Contract. Supplier shall ensure that all personnel providing goods and services to the IPA and Buyers are responsive to the IPA's and Buyers' requirements and requests in all respects.
- 19. Authorization.** Each party to the Contract represents and warrants to the other parties that:
- a. It has the right, power and authority to enter into and perform its obligations under the Contract.
 - b. It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 20. Successors in Interest.** All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- 21. Record Retention and Access.** The Supplier shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the IPA and the Buyers throughout the term of the Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Supplier shall permit the Auditor of the State of Iowa or any authorized representative of the IPA and the Buyers and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Supplier relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Supplier's books and records. If an audit discloses incorrect billings or improprieties, the IPA and the Buyers reserve the right to charge the Supplier for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.
- 22. Solicitation.** The Supplier warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.
- 23. Immunity from Liability.** Every person who is a party to the Contract is hereby notified and agrees that the State of Iowa, the Iowa Board of Regents, all Board of Regents Institutions, other IPA's employees and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Supplier's and/or subcontractors' activities involving third parties and arising from the Contract.
- 24. Nondiscrimination.** When providing goods and services to Board of Regents or Regent Institutions, Supplier is subject to and must comply with provisions of the State of Iowa, Board of Regents Equal Opportunity Policy and applicable state and federal antidiscrimination laws, including the requirements set forth in 41 C.F.R. Section 60-1.4(b), which is incorporated herein by reference.
- 25. Public Records.** The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.
- 26. Clean Air and Water Certification.** Supplier certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Supplier will immediately notify the IPA of the receipt of any communication indicating that any of Supplier's facilities are under consideration to be listed on the EPA List of Violating Facilities
- 27. Debarred, Suspended, and Ineligible Status.** Supplier certifies that the Supplier and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Iowa or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Supplier will immediately notify the IPA if Supplier is

debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

- 28. Use of Name or Intellectual Property.** Supplier agrees it will not use the name or any intellectual property, including but not limited to, any State of Iowa, state agency, Board of Regents, Regent institutions, or University trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the specific institution, IPA, and/or the State.
- 29. Code of Fair Practice.** Supplier shall not discriminate against any employee or applicant for employment because of race, color, religion, sexual orientation, gender identification, marital status, national origin, sex, age, physical or mental disability, or status as a U.S. veteran. Supplier shall take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, color, religion, sexual orientation, gender identification, marital status, national origin, sex, age, status as a U.S. veteran or physical or mental disability, except where it relates to a bona fide occupational qualification. In performance of the contract, Supplier shall comply with provisions stipulated in Executive Order 11246, as amended by executive order 11375. In the event of Supplier's noncompliance with the above nondiscrimination clause of the contract or with any of the aforesaid regulations, the Contract may be canceled, terminated or suspended in whole in part and Contractor may be declared ineligible for further Contracts with the IPA, Regents Institutions, or other affiliated institutions. In addition the IPA may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by law.
- 30. Most Favored Nation.** The selected Supplier represents that the terms, conditions and prices offered in accordance with the Contract are equal to or better than those offered to other state governments, institutions, comparable universities, teaching hospitals, colleges, and/or community colleges. If during the term of the Contract, the selected Supplier offers more favorable terms, conditions or prices to another state government, institution, comparable universities, teaching hospitals, colleges and/or community colleges, the selected Supplier agrees to notify the IPA. The Contract shall be amended to reflect the more favorable terms, conditions or prices.
- 31. Taxes.** The IPAs and the Buyers are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Supplier's employee's wages. The IPAs and the Buyers are exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request.
- 32. Certification Regarding Sales and Use Tax.** By executing the Contract the Supplier certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Iowa Code chapter 432; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the IPA may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the IPA or its representative filing for damages for breach of contract.
- 33. Supplier Assignments of Rights -Antitrust Claims.** In consideration of the mutual promises contained herein, Supplier, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa relating to the subject of the Contract.
- 34. Delay or Impossibility of Performance.** Neither party shall be in default under the Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Supplier. If delay results from a subcontractor's conduct, negligence or failure to perform, the Supplier shall not be excused from compliance with the terms and obligations of the Contract.
- 35. Obligations Beyond Contract Term.** The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Supplier incurred or existing under the Contract as of the date of

expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.

- 36. Counterparts.** The parties agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- 37. Further Assurances and Corrective Instruments.** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.
- 38. Conflict of Interest.** Should Contractor, Contractor's spouse or minor child be a paid employee of the University or any other Iowa Regent Institution or State of Iowa Agency, Contractor will be considered a "conflict of interest vendor." In addition, should any individual, their spouse or minor child, who is a paid employee of the University or any other Regent institution or State of Iowa Agency, also be a partner in Contractor's firm or own five percent (5%) or more of Contractor's corporate stock or receive consulting payments, a conflict of interest exists. Whenever Contractor represents a conflict of interest, Contractor must have prior approval from the "Board of Regents, State of Iowa" (Regents) to do business with the University. Contact the Purchasing Department at (319) 335-0668 for further information and do not sign this Agreement, until express approval has been given by the Purchasing Department. In addition, the Office of Management and Budget (OMB) Circular A-110 imposes additional requirements on federally funded projects. See Procurement Standards #42 Codes of Conduct, www.whitehouse.gov/omb/circulars/a110/a110.html#42
- 39. Export Control.** Supplier acknowledges that a foreign national(s) may use the device/technology/and or data you propose, at the University.

Supplier shall comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions/exceptions, Supplier shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Supplier shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

Prior to disclosing or transferring to University any hardware, technical data, software or product utilizing any such data which is subject to export controls under federal law, Supplier shall notify the University in writing of the nature and extent of the export control. The University shall have the right to decline any such technical data or product utilizing such data. In the event Supplier sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the University has the right to immediately terminate this Agreement.