

LEASE COMMUNICATIONS SYSTEM AGREEMENT

Motorola Solutions, Inc. ("Motorola") and the State of Iowa ("State") enter into this "Agreement," pursuant to which the State will purchase and Motorola will sell the System, as described below. Motorola and the State may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 EXHIBITS AND DOCUMENTS INCORPORATED BY REFERENCE

This Agreement arises out of Request for Proposal 1013005265—Iowa Statewide 700 MHz P25 LMR Network, as amended by Addendums, ("RFP") and Motorola's Proposal in response thereto ("Proposal"), both of which are incorporated into this Agreement by this reference, except that no material objection or amendment by Motorola to the provisions of the RFP shall be incorporated by reference into this Agreement unless the State has explicitly accepted Motorola's objection or amendment in writing. The parties acknowledge that this Agreement incorporates the Iowa Department of Administrative Services' General Terms and Conditions for Services Contracts as modified by the parties ("General Terms") and incorporated herein as Exhibit A. Exhibits B, C, D, E, F and G listed below are incorporated into and made a part of this Agreement. If there is a conflict between the Agreement, the RFP and the Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the RFP, as modified by the General Terms and Sections 9--Insurance; and 10--Software License Terms, and Exhibit G of this Agreement ; (2) the Agreement; (3) the Proposal.

- Exhibit A "General Terms"
- Exhibit B "Payment Schedule"
- Exhibit C "Technical and Implementation Documents"
 - C-1 "System Description" (included in Supplement 13 of the Proposal)
 - C-2 "Equipment List" (included in Supplement 14 of the Proposal)
 - C-3 "Statement of Work" (included in Supplement 15 of the Proposal)
 - C-4 "Acceptance Test Plan" or "ATP". A sample of an Acceptance Test Plan is included in Supplement 15 of the Proposal. Motorola will submit an Acceptance Test Plan at the time of Detailed Design Review, which will be revised in accordance with the discussions between the Parties. The State will approve the final, mutually agreed upon version of the Acceptance Test Plan.
 - C-5 "Performance Schedule". A preliminary version of the Performance Schedule is included in Supplement 15 of the Proposal. The State will approve the final version of the Performance Schedule.
- Exhibit D "Service Statements of Work"
 - D-1 "Warranty Services" (Supplement 18 of the Proposal)
 - D-2 "Maintenance Services" (Supplement 17 of the Proposal)
 - D-3 "System Upgrade Services"
- Exhibit E "System Acceptance Certificate"
- Exhibit F "Final Acceptance Certificate"
- Exhibit G "Additional Terms"

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- 2.1. "Acceptance" has the meaning as defined in the General Terms.
- 2.2. "Acceptance Tests" or "Acceptance Testing" has the meaning as defined in the General Terms and includes the tests agreed upon by the Parties and described in the Acceptance Test Plan, the RFP and the Proposal.
- 2.3. "Administrative User Credentials" means an account that has total access over the operating system, files, and user accounts and passwords at either the System level or box level. State's personnel with access to the Administrative User Credentials may be referred to as the Administrative User.
- 2.4. "Confidential Information" has the meaning as defined in the General Terms.
- 2.5. "Contract Price" means the price for the System and other services to be provided by Motorola under this Agreement.
- 2.6. "Effective Date" means that date upon which the last Party executes this Agreement and the Equipment Lease Purchase Agreement.
- 2.7. "Equipment" means the equipment that the State purchases from Motorola under this Agreement including without limitation the State Equipment purchased by Motorola as enhanced, rebuilt, upgraded, and replaced as part of the System. Equipment that is to be purchased by the State as part of the System is described in the Equipment List.
- 2.8. "Equipment Lease-Purchase Agreement" means the agreement to be entered into by the Parties and by which the State finances the System Price.
- 2.9. "Force Majeure" has the meaning as defined in the General Terms.
- 2.10. "Infringement Claim" means a claim alleging that the Equipment provided by Motorola to the State hereunder or the Motorola Software provided hereunder infringes an intellectual property right, or personal right, or misappropriates a trade secret of a third party.
- 2.11. "Motorola Software" means Software that Motorola or its affiliated company owns.
- 2.12. "Non-Motorola Software" means Software that another party owns.
- 2.13. "Open Source Software" (also called "freeware" or "shareware") means software with either freely obtainable source code, license for modification, or permission for free distribution.
- 2.14. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment (excluding the State Equipment) and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.
- 2.15. "Software" (i) means the proprietary software included in the Deliverables in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola.

2.16. "Specifications" has the meaning as defined in the General Terms.

2.17. "State Equipment" means the Equipment owned by the State that is sold to Motorola following execution of this Agreement and the Equipment Lease Purchase Agreement and leased back to the State during the term of the Agreement. The State Equipment will be purchased back by the State as provided in the Equipment Lease-Purchase Agreement.

2.18. "Subsystem" means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.

2.19. "System" means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system for the Statewide 700 MHz P25 LMR Network; the System is described in the RFP, the Proposal, and the Technical and Implementation Documents.

2.20. "System Acceptance" means the Acceptance Tests for the System, as agreed upon by the Parties and described in the Acceptance Test Plan, the RFP and the Proposal have been successfully completed.

2.21. "Warranty Period" means three (3) years from the date of System Acceptance.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Motorola shall implement the System, and the System shall operate as presented in Motorola's Proposal; if it does not, for reasons other than those as specified in Exhibit G, section 1.1, Motorola shall make any upgrades, changes, and repairs necessary to bring the System to the level represented in the Proposal, without any additional costs or charges to the State of Iowa and without delays in the Performance Schedule. In addition to its other responsibilities as provided herein, Motorola agrees to be a non-voting participant and technical adviser to the Iowa State Interoperable Communications System Board. The State will perform its contractual responsibilities in accordance with this Agreement.

3.2. **DETAILED DESIGN REVIEW AND CHANGE ORDERS.** The Detailed Design Review (DDR) process shall be used to identify any errors, changes and design issues with the System. Motorola shall be responsible for promptly correcting and resolving all such errors, changes and issues during the DDR process in accordance with the Performance Schedule and at no cost to the State. Motorola shall provide the State with fleetmapping assistance and no fewer than 100 programming templates during the DDR at no cost to the State. Either Party may request a modification of the Statement of Work using the change order process described in the General Terms. Motorola shall be responsible for any and all increased costs associated with change orders unless the change order is initiated by the State.

3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues for a period of ten (10) years from the date of System Acceptance ("Term"), unless earlier terminated as provided herein.

3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For ten (10) years after the date of System Acceptance, State may order additional Equipment or Software. Each order must refer to this Agreement and must specify the pricing and delivery terms. Warranty will start upon delivery. Motorola will send State an invoice as the additional Equipment is shipped or Software is licensed.

3.5. **MAINTENANCE SERVICES.** During the Term, in addition to the warranty services and support for the Motorola Software as provided in the RFP and the System Upgrade Services as set forth in Exhibit D-3 of this Agreement, Motorola shall provide the maintenance services as

provided in the RFP and the Maintenance Statements of Work set forth in the Proposal. Those services and support are included in the Contract Price. If the State wishes to purchase maintenance and support services for the Equipment after the Term, the description of and pricing for the services will be set forth in a separate document. If the State wishes to purchase extended support for the Motorola Software after the Term, it may do so by ordering software subscription services under a separate agreement.

3.6. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to the State solely in accordance with the Software License Terms as provided in Section 10 of this Agreement.

3.7. SUBSTITUTIONS. With State approval and at no additional cost to State, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the State, in the State's sole determination. Any substitution will be reflected in a change order.

3.8. OPTIONAL EQUIPMENT OR SOFTWARE. During the Contract Term the State and other State and local government entities shall have the right and option to purchase the equipment, software, and related services that are described in Supplement 16—Optional Features of the Proposal and priced in Motorola's Cost Proposal. The State and other State and local government entities may exercise this option by giving written notice to Motorola, which notice must designate what equipment, hardware, software, and related services they are selecting (including quantities, if applicable). The terms and conditions of this Agreement will govern the purchase of Optional Equipment, except that the parties may need to negotiate statements of work, acceptance test plans, delivery and implementation schedules, and form of payment for the Optional Equipment.

3.9. SYSTEM EQUIPMENT INVENTORY. Motorola shall maintain and update a list of System Equipment in inventory. The inventory list shall include the value of each Equipment asset as added to inventory throughout the Term of the Agreement. Motorola shall provide periodic inventory reports to the State no less frequently than annually or otherwise at the State's request. Motorola shall provide the State with a final fixed asset inventory of System Equipment within thirty (30) days after Final Acceptance at the end of the Term or upon earlier termination of this Agreement.

3.10. PURCHASE OF STATE EQUIPMENT. Motorola shall purchase the State Equipment for the prices as provided in Motorola's Cost Proposal (pp. 32-33) promptly following completion of the Detailed Design Review process. Ownership of the State Equipment as included in the System will revert to State ownership pursuant to the terms of the Equipment Lease Purchase Agreement.

Section 4 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the Performance Schedule approved by the State.

Section 5 CONTRACT PRICE, PAYMENT AND INVOICING

5.1. CONTRACT PRICE. The Contract Price in U.S. dollars is \$58,852,002. The System price is \$40,742,596. The Maintenance, including Software Upgrade Agreement price for the Term is \$16,207,448. The Tower Rental for the Term is \$1,901,958. Motorola will invoice and the State will approve invoices for Deliverables as provided in Section D.1 of the General Terms. The System price is payable from an escrow established in connection with the Equipment Lease-Purchase Agreement executed between the parties. As part of the Equipment Lease Purchase Agreement, Motorola will submit to the State an escrow disbursement document that must be approved by the State in order for Motorola to receive disbursements from the escrow account. The

State agrees to sign such documents for approved invoices of Deliverables performed and accepted by the State. The maintenance price and tower rental are payable annually in advance of each applicable year. For the State's reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800. A System Payment Schedule is contained in Exhibit B. Motorola agrees that upon purchase under the Equipment Lease Purchase Agreement, the State shall become the sole and exclusive owner of the System, including without limitation the State Equipment, with the exception of any software that may be included in the System, to which the State will have a non-exclusive, fully paid up right and license pursuant to the terms included in this Agreement.

5.2. TITLE AND RISK OF LOSS. Title to the System, including without limitation the State Equipment, will pass to the State upon purchase under the Equipment Lease Purchase Agreement. Title to Software will not pass to the State at any time. Motorola shall bear the risk of loss for the Equipment, including the State Equipment, during the Term, or until title passes to the State, whichever occurs first. Motorola will pack and ship all Equipment in accordance with best commercial practices.

5.3 INVOICING ADDRESS. Invoices will be sent to the State at the following address:

State of Iowa
Finance Department
Hoover Building – Third Floor
1305 E. Walnut Street
Des Moines, IA
50319

Shipping addresses will be determined at the Design Review meeting.

The State may change this information by giving written notice to Motorola.

Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. In addition to their responsibilities described elsewhere in this Agreement, the Parties each will provide a designated project manager, as provided in the General Terms. The State will provide or arrange for access to the work sites or vehicles owned by the State and identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. Motorola shall be responsible for obtaining all necessary building and other permits and approvals. At Motorola's reasonable request, the State may, in its discretion, provide assistance in the process.

6.2. SITE CONDITIONS. Motorola has visited, studied, examined and investigated the conditions of all sites it has identified in its Proposal for use in the System. All such work sites selected by Motorola to be used in the System, including the State-owned sites, are provided as is. The State makes no representations regarding the conditions of or amenities available at work sites. Motorola shall bear all costs associated with the use of the sites as part of the System, which costs are included in the Contract Price.

6.3. SITE ISSUES. If the Parties determine that a site identified in the Technical and Implementation Documents is no longer available or desired, Motorola will promptly investigate the conditions and will select replacement sites or adjust the installation plans as necessary, while meeting the requirements of the Performance Schedule and at no additional cost to the State.

Section 7 TRAINING

The training to be provided by Motorola to the State will be as provided in the RFP and the Proposal. The State will notify Motorola promptly if a date change for a scheduled training program is required.

Section 8 ADMINISTRATOR LEVEL ACCOUNT ACCESS

Motorola will provide the State with Administrative User Credentials. The State agrees to only grant Administrative User Credentials to those personnel with the training or experience to correctly use the access. The State is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. The State may be asked to provide valid Administrative User Credentials when in contact with Motorola System support.

Section 9 INSURANCE

SECTION 6.3 OF RFP #1013005265 is deleted in its entirety and replaced by the following:

9.1 ENDORSEMENT. Motorola shall, at its sole expense, maintain in full force and effect, with insurance companies approved or authorized to conduct business in the State of Iowa and reasonably acceptable to the State, insurance covering its work of the type and in amounts required by this Agreement. Motorola's insurance shall insure against loss or damage arising during and resulting from or related to Motorola's performance of this Agreement regardless of the date the claim is filed or expiration of the policy, except for claims barred by an applicable statute of limitations. For the avoidance of doubt, the State, and not Motorola, shall be responsible for loss, damage or injury directly caused by the State or its contractors (but excluding Motorola and its subcontractors) while at work sites. All insurance policies required by this Agreement shall: (i) remain in full force and effect for the entire term of this Agreement; and (ii) not be canceled without prior written notice to the State. The State of Iowa and the State shall be included as additional insureds on all such policies, and all such policies shall include blanket endorsements whereby the State of Iowa is included as an additional insured. The coverage afforded shall be primary. 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." Unless otherwise requested by the State, Motorola shall cause to be issued insurance policies with the coverages set forth below:

9.2 TYPES AND AMOUNTS OF INSURANCE:

Type of insurance	Limit	Amount
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General Liability (including contractual liability) written on an occurrence basis	General Aggregate	<i>\$10 million</i>
	Products – Comp/Op Aggregate	<i>\$5 million</i>
	Personal injury Each Occurrence	<i>\$5 million</i>
	Property Damage Each Occurrence	<i>\$1 million</i>
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	Each Accident <i>\$5 million</i>
Errors and Omissions Insurance	Each Claim	Aggregate <i>\$2 million</i> Each Occurrence <i>\$2 million</i>

9.3 CLAIMS PROVISION

All insurance policies required by this Agreement must provide coverage on an “occurrence basis” for all claims arising from activities occurring during the term of the Agreement regardless of the date the claim is filed or expiration of the policy, except for claims barred by an applicable statute of limitations.

9.4 CERTIFICATES OF COVERAGE

At the time of execution of this Agreement, Motorola shall deliver to the State certificates of insurance evidencing the types and the amounts of coverage, in force before Motorola starts work, and stating that the State of Iowa is included as additional insured on the policies of insurance as required herein. All certificates of insurance shall be issued on an Acord form.

9.5 LIABILITY OF MOTOROLA

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

9.6 FILING OF CLAIMS

In the event either the State suffers a loss covered by any of the required policies and is unable to file a claim under any policy of insurance required under this Agreement, Motorola shall, at the State's request, immediately file a proper claim under such policy. Motorola will provide the State with proof of filing of any such claim and keep the State fully informed about the status of the claim. In addition, Motorola 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. Motorola shall pay to the State any insurance proceeds or payments due to the State that Motorola receives in connection with any such claim immediately upon Motorola's receipt of such proceeds or payments.

9.7 PROCEEDS

In the event the State suffers a loss that may be covered under any of the insurance policies required under this Section 9, neither the Motorola 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 has fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits).

Section 10 SOFTWARE LICENSE TERMS

10.1 LICENSE TO SOFTWARE

10.1.1 Subject to the payment of the purchase price for the Deliverables, Motorola grants to the State a non-exclusive, fully paid up license to the Software included in the Deliverables solely in connection with the use of the Deliverables by the State, its agencies and political subdivisions, and their employees and agents. Any commercial off the shelf ("COTS") software (e.g. Microsoft and McAfee) and open source software included in the Deliverables is licensed by Motorola under its own respective license agreement and not under the terms included herein. Motorola represents and warrants to the State that unless the State uses the open source software to compile software code, the State's use of the Deliverables as provided in this Agreement will comply with the Open Source Software license terms; Motorola shall defend and indemnify the State from any claims brought against the State by the owner of Open Source Software, as provided in Section 2 of these Software License Terms. The license does not grant any rights to source code. No rights are granted to the State under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to the State under this Agreement.

10.1.2 The State will not, and will not allow or enable any third party to: attempt to recreate the source code; modify, adapt, create derivative works of or merge the Software; copy, reproduce, or distribute the Software; remove, alter or obscure any copyright or other notice of Motorola's proprietary rights; or provide, copy, transmit, disclose, divulge or make the Software available to, or permit the use of the Software by, any third party except as authorized in this Agreement. The State may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that the State may not operate that copy of the Software at the same time as the original Software is being operated. The State may make as many copies of the Software documentation as it may reasonably require for the internal use of the Software.

10.1.3 Unless otherwise authorized by Motorola in writing, the State will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Deliverable; or (ii) copy onto or transfer Software installed in one unit of a Deliverable onto one other device. The State may temporarily transfer Software installed on a Deliverable to another device if the Deliverable is inoperable or malfunctioning, if the State provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred.

Temporary transfer of the Software to another device must be discontinued when the original Deliverable is returned to operation and the Software must be removed from the other device. The State must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

10.1.4 The State will not transfer the Software or documentation to any third party without prior written notice to Motorola. Motorola's consent may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by these Software License Terms. Notwithstanding the foregoing, RSS and Motorola's FLASHport® software and the related documentation shall not be assigned as these software are not required for the radio products to function but are required to program changes to the radios. These software may be licensed separately by future transferees.

10.1.5 The State's right to use the Software and documentation will begin when this Agreement is signed by both parties and will continue for the life of the Deliverables with which or for which the Software and documentation have been provided by Motorola, unless the State commits a material, uncured breach of the Software License Terms (which breach must be cured within five (5) business days), in which case this the State's right to use the Software and documentation may be terminated immediately upon notice by Motorola.

10.1.6 Within thirty (30) days after termination of the license to use the Software as provided in Section 10.1.5, the State must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Deliverables and that all copies of the Software and documentation have been returned to Motorola or destroyed by the State and are no longer in use by the State.

10.2 INTELLECTUAL PROPERTY INDEMNIFICATION

10.2.1 Motorola will defend at its expense any suit brought against the State to the extent it is based on a third-party claim alleging that a Deliverable infringes an intellectual property right, proprietary right, or personal right, or misappropriates a trade secret of a third party ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: the State promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and the State providing to Motorola reasonable cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim, at Motorola's expense. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against the State by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim and will reimburse the State for its reasonable expenses incurred in providing cooperation and assistance as requested in Motorola's defense of the Infringement Claim.

10.2.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for the State the right to continue using the Deliverable; (b) replace or modify the Deliverable so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Deliverable and promptly refund the State the sums paid by the State for the Deliverable.

10.2.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the State's combination of the Deliverable with any software, apparatus or device not furnished by Motorola; (b) the State's use of ancillary equipment or software not furnished by Motorola and that causes the Deliverable to be infringing; (c) a Deliverable designed or manufactured in accordance with the State's designs, specifications, guidelines or instructions, if

the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) modification of the Deliverable by a party other than Motorola; (e) use of the Deliverable in a manner for which the Deliverable was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by the State to install an enhancement release to the Deliverable that is intended to correct the claimed infringement.

10.2.4. This Section 10.2 provides the State's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim.

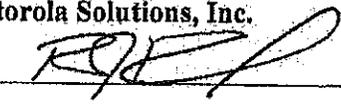
Section 11 SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 10 (Software License Terms); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); General Terms; Section E.4 (Limitations of State's Payment Obligations); Section E.5 (Contractor's Termination Duties); Section F (Confidential Information); Section G (Indemnification); Section L (Warranties); Section N.26 (Records Retention and Access).

Section 12 SYSTEM ACCEPTANCE

System Acceptance, as defined herein, will take place upon successful completion of the Acceptance Tests for the System, as agreed upon by the Parties and described in the Acceptance Test Plan, the RFP and the Proposal.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

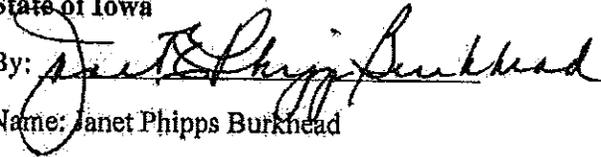
By: 

Name: Robert Rummel

Title: MSSSI Vice President

Date: 8/13/15

State of Iowa

By: 

Name: Janet Phipps Burkhead

Title: Director, Iowa Department of Administrative Services

Date: 08/13/2015

EXHIBIT A

GENERAL TERMS

Note: All references in this Exhibit A to "Contractor" shall mean "Motorola"; all references to "Agency" shall mean the State; and all references to "Contract" shall mean the "Agreement", as such terms are defined and used in the Agreement.

I. The following revisions are made to the General Terms and Conditions for Service Contracts in effect at the time the RFP was issued, which are reproduced in Section II of this Exhibit A.

A. DEFINITIONS AND GENERAL INFORMATION

The definition of "Acceptance" is deleted in its entirety and replaced by the following. All other definitions remain the same.

1. "Acceptance" means that the Agency has determined that one or more Deliverables satisfy the Agency's Acceptance Tests. "System Acceptance" means the Acceptance Tests for the System, as agreed upon by the Parties and described in the Acceptance Test Plan, the RFP and the Proposal have been successfully completed. Final Acceptance shall mean that Motorola has successfully provided and performed, and the State has accepted, all Deliverables, and Motorola has satisfied all other responsibilities under the RFP, and this Agreement, throughout the Term. Non-acceptance means that the Agency has determined that one or more Deliverables have not satisfied the Agency's Acceptance Tests.

D. Compensation - Section 1 is deleted in its entirety and replaced by the following. All other sections remain the same.

1. **Pricing.** The Contractor will be compensated in accordance with the payment terms outlined in Section 5.1 and Exhibit B of the Contract. The Contractor shall submit an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and in conformance with Iowa Code 8A.514. The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

E. Termination—Section 1 is deleted in its entirety and replaced by the following. All other sections remain the same.

1. **Termination for Cause.** If a party to this Contract (breaching party) is in breach of any material term, condition or provision of this Contract, the other party (non-breaching party) may provide written notice of such breach, giving the breaching party thirty (30) days after receipt of the notice of breach to either (i) cure the breach or (ii) if the breach is not curable within thirty (30) days, to provide a written cure plan for the non-breaching party's approval. The breaching party shall begin implementing the cure plan immediately after receipt of the non-breaching party's approval thereof. If the breaching party fails to cure the breach within the time period established in the cure plan, the non-breaching party shall have the right immediately to terminate the Contract. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- i. Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is intentionally false or is deceptive or materially incorrect or incomplete;
- ii. Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith, in the implementation of the work performed pursuant to this Contract;
- iii. Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- iv. Contractor terminates or suspends its business;
- v. Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- vi. Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- vii. The Agency determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Agency or the State to material liability; or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- viii. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- ix. Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:
 - a. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - b. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
 - c. Making an assignment for the benefit of creditors;
 - d. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or

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

F. Confidential Information—Section F is deleted in its entirety and replaced by the following:

1. **Access to Confidential Information.** The parties' employees, agents and subcontractors may have access to confidential information maintained by the party to the extent necessary to carry out its responsibilities under the Contract. Confidential information does not include any information that: is or becomes publicly known through no wrongful act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Contract, in the receiving party's possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing party. Confidential information is and will at all times remain the property of the disclosing party, and no grant of any proprietary rights in the confidential information is given or intended, including any express or implied license, other than the limited right of the receiving party to use the confidential information in the manner and to the extent permitted by this Contract. Upon termination of this Contract, each party will return the other party's confidential information. Upon written request, the Contractor shall provide to the Agency a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract.

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

3. **Subpoena.** In the event that a subpoena or other legal process is served upon a party for records containing confidential information of the other party, the other party shall promptly notify and cooperate with the other party in any lawful effort to protect the confidential information.

4. **Reporting of Unauthorized Disclosure.** A party shall immediately report to the other party any unauthorized disclosure of the other party's confidential information.

5. **Survives Termination.** The parties' obligations under this section shall survive termination or expiration of this Contract.

G. Indemnification—Section G is deleted in its entirety and replaced by the following:

1. **By the Contractor.** The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's

Office), and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including, without limitation:

- i. Any breach of this Contract;
- ii. Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- iii. The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;
- iv. Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;
- v. Contractor provides an indemnification right for breach of certain third party intellectual property rights as set forth in section 10.2 of the Contract.

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

3. Agency Cooperation. Contractor's duties to defend and indemnify are conditioned upon: the Agency promptly notifying Contractor in writing of the claim; Contractor having sole control of the defense of the suit and all negotiations for its settlement or compromise; and the Agency providing to Contractor reasonable cooperation and, if requested by Contractor, reasonable assistance in the defense of the claim, at Contractor's expense.

H. Insurance-- Section H is deleted in its entirety

I. Project Management & Reporting--Section I is deleted in its entirety and replaced by the following:

1. Project Manager. At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. Contractor shall promptly replace its designated project manager and any other project team member upon the Agency's written request. All Motorola employees and contractors involved in performing services under this Agreement shall be subject to criminal background checks. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the Deliverables being provided under this Contract.

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

3. Reports. At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party

may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

- i. Any event not within the control of the Contractor or the Agency that accounts for the problem;
- ii. Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;
- iii. Damages incurred as a result of any party's failure to perform its obligations under this Contract; and
- iv. Any request or demand by one party that another party believes is not included within the terms of this Contract.

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

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

- i. **Written Request.** The Agency shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.
- ii. **The Contractor's Response.** The Contractor shall submit to the Agency a firm cost proposal for the requested change order and proposed change in the performance schedule within five (5) business days of receiving the change order request.
- iii. **Acceptance of the Contractor Estimate.** If the Agency accepts the cost proposal and/or change in performance schedule, if any, presented by the Contractor, the parties shall reflect such changes in a change order. Contractor shall provide the modified Deliverable subject to the cost proposal and revised performance schedule, if any, included in the change order. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract.
- iv. **Adjustment to Compensation.** The parties acknowledge and agree that with the exception of change orders initiated by the Agency, Contractor shall be responsible for all increases in costs associated with changes or modifications to the System.

K. Intellectual Property—Section K is deleted in its entirety and replaced by the following:

1. Ownership and Assignment of Other Deliverables. Contractor agrees that, upon purchase under the Equipment Lease Purchase Agreement, the State and Agency shall become the sole and exclusive owners of all Deliverables with the exception of any software that may be included in the Deliverables (which will be licensed pursuant to the terms included in this Agreement). Upon purchase under the Equipment Lease Purchase Agreement, Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables. Contractor represents and warrants that, if and when transferred, the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. Unless otherwise requested by Agency, upon completion or termination of this Contract

and purchase under the Equipment Lease Purchase Agreement, Contractor will immediately turn over to Agency all Deliverables not previously delivered to Agency. Notwithstanding the foregoing, any and all preexisting intellectual property rights shall remain fully vested in the original owner of those rights and nothing herein shall be construed as a transfer of those rights.

L. Warranties-- Section L is deleted in its entirety and replaced by the following:

- 1. Construction of Warranties Expressed in this Contract with Warranties Implied by Law.** THE WARRANTIES INCLUDED IN THE MOTOROLA PROPOSAL AT SECTION 18 ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 2. Contractor represents and warrants that:** (i) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party; (ii) Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; (iii) Contractor does not and will not grant any third party rights in any Deliverables to any Agency that are inconsistent with the rights granted it by a third party; and (iv) the Agency shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.
- 3. Contractor represents and warrants that:** (i) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (ii) the Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Contractor shall inform the Agency in writing within five (5) business days of becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret.
- 4. Contractor represents and warrants that the Deliverables (in whole and in part) shall:** (i) be free from material Deficiencies; (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Contract; and (iii) comply with the warranty provisions included in the proposal and elsewhere in this Agreement. During the Warranty Period Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five (5) business days of receiving notice of such Deficiencies or failures from the Agency. In the event Contractor is unable to repair, correct or replace such Deliverable to the Agency's satisfaction, Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the

Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

5. **Contractor represents, warrants and covenants** that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Contractor and provides supporting information regarding services Contractor has performed that do not meet this standard, Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Agency any fees or compensation paid to Contractor for the unsatisfactory services.

6. **Contractor represents and warrants** that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all statutory and regulatory requirements of the Iowa Department of Administrative Services, Information Technology Enterprise.

7. **Obligations Owed to Third Parties.** Unless otherwise agreed to between the parties in an amendment to this Contract, the Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Agency will not have any obligations with respect thereto.

N. Contract Administration— Section N is deleted in its entirety and replaced by the following:

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

2. **Incorporation of Documents.** To the extent this Contract arises out of an RFP, the parties acknowledge that the Contract consists of these contract terms and conditions (including the Supplemental Terms and Conditions below) as well as the RFP and the Bid Proposal. The RFP and the Bid Proposal are incorporated into the Contract by reference, except that no material objection or amendment by the Contractor to the provisions of the RFP shall be incorporated by reference into the Contract unless the Agency has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict between the Contract, the RFP and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the RFP, as modified by the General Terms and Sections 9--Insurance, and 10--Software License Terms, and Exhibit G, of this Agreement; (2) the Contract; (3) the Bid Proposal.

3. **Intent of References to Bid Documents.** The references to the parties' obligations, which are contained in this Contract, are intended to supplement or clarify the obligations as stated in the RFP and the Bid Proposal. The failure of the parties to make reference to the terms of the RFP or the Bid Proposal in this Contract shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFP and the Contractor's Bid Proposal. The contractual obligations of the Agency cannot be implied from the Bid Proposal unless expressly set out therein; provided, however, that if there is conflict or inconsistency between the obligations of the Agency as expressed as the Bid Proposal and

the obligations of the Agency as expressed in the RFP or the Contract (including these general terms and conditions), and the Agency has not otherwise accepted the obligations imposed on it by the Bid Proposal, the provisions of the RFP or Contract shall take precedence over those in the Bid Proposal.

4. **Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when providing Deliverables under this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, 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 this Contract. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC chapter 4. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.
5. **Procurement.** Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.
6. **Non-Exclusive Rights.** This Contract is not exclusive. The Agency reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the term of this Contract.
7. **Non-Supplanting Requirement.** To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.
8. **Compliance with Iowa Code chapter 8F.** If the Contract is subject to the provisions of Iowa Code chapter 8F, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Agency.
9. **Amendments.** This Contract may be amended in writing from time to time by mutual consent of the parties. Amendments to the General Terms for Services Contracts may appear in the Special Terms.
10. **Third Party Beneficiaries.** There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.
11. **Use of Third Parties.** The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Agency in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the

time the subcontract(s) become effective. The Agency reserves the right to review and approve all subcontracts and to conduct criminal background checks on their personnel providing services under the subcontract. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

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

13. Assignment and Delegation. Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber, any payments that may or will be made to the Contractor under this Contract.

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

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

16. Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

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

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

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

20. Notice. Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who

signed the Contract on behalf of the party at the address identified in the Contract Declarations & Execution Page(s) at the address specified on the forms. Each such notice shall be deemed to have been provided:

- i. At the time it is actually received; or,
- ii. Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
- iii. Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

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

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

23. Time is of the Essence. Time is of the essence with respect to the parties' performance of the terms of this Contract. The parties shall ensure that all personnel are responsive to the other party's requirements and requests in all respects.

24. Authorization. Each Party represents and warrants that:

- i. It has the right, power and authority to enter into and perform its obligations under this Contract.
- ii. It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

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

26. Records Retention and Access. The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures.

In no circumstances will the Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose its product cost data.

27. Audits. Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Agency if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Agency that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. Contractor shall provide the Agency with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors. In no circumstances will the Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose its product cost data.

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

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

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

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

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

from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use commercially reasonable efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused. If a force majeure event occurs, the parties will execute a change order to extend the performance schedule for a time period that is reasonable under the circumstances.

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

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

35. Certification regarding sales and use tax. By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the Agency may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

36. Right to Address the Board of Directors or Other Managing Entity. The Agency reserves the right to address the Contractor's board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Agency determines appropriateness.

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

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

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

40. Immunity from Liability. Every person who is a party to the Contract is hereby notified and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

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

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

43. Taxes. The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables.

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

45. Ownership and Title.

Upon purchase under the Equipment Lease Purchase Agreement, the State shall own the Deliverables (aside from any software that may be included in the Deliverables which shall be licensed pursuant to the terms included elsewhere in this Agreement); Contractor, its licensors, and its suppliers retain all of their intellectual proprietary rights in any form in the Deliverables, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Deliverables. All intellectual property developed, originated, or prepared by Contractor in connection with providing the Deliverables, remains vested exclusively in Contractor, and the State will not have any shared development or other intellectual property rights. The license of software Deliverables is described in the Contract.

II. The following General Terms and Conditions for Service Contracts/Solicitations were in effect at the time the RFP was issued. The Parties have agreed to revisions to these General Terms and Conditions as provided Section I of this Exhibit A.

A. DEFINITIONS AND GENERAL INFORMATION

The following words shall be defined as set forth below:

1. "Acceptance" means that the Agency has determined that one or more Deliverables satisfy the Agency's Acceptance Tests. Final Acceptance means that the Agency has determined that all Deliverables satisfy the Agency's Acceptance Tests. Non-acceptance means that the Agency has determined that one or more Deliverables have not satisfied the Agency's Acceptance Tests.

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

3. "Acceptance Tests" or "Acceptance Testing" mean the tests, reviews and other activities that are performed by or on behalf of Agency to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.
4. "Bid Proposal" or "Proposal" means the Contractor's proposal submitted in response to the RFP.
5. "Contract" means the collective documentation memorializing the terms of the agreement between the Agency and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s), the Special Terms, these General Terms for Services Contracts, any Special Contract Attachments, and all other attachments to the Contract Declarations & Execution Page(s).
6. "Contract Declarations & Execution Page(s)" means the document that contains basic information about the Contract and incorporates by reference these General Terms for Services Contracts, the Special Terms, and all other attachments to the Contract Declarations and Executions Page(s).
7. "Deficiency" means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.
8. "Deliverables" means all of the goods, products, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Contractor (or any agent, contractor or subcontractor of Contractor) in connection with this Contract.
9. "Documentation" means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.
10. "RFP" means the Request for Proposals or Request for Bids (and any Addenda thereto) identified on the Contracts Declarations and Execution Page(s) that was issued to solicit the Deliverables that are subject to the Contract.
11. "Special Contract Attachments" means any attachment to this Contract indicated on the Contract Declarations & Execution Page(s).
12. "Special Terms" means the Contract attachment entitled "Special Terms" that contains terms specific to this Contract, including but not limited to the Scope of Work, contract payment terms, and any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms for Services Contracts and the Special Terms, the Special Terms shall prevail.
13. "Specifications" means all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the RFP, and the Proposal. Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.
14. "State" means the State of Iowa, the Agency, and all State of Iowa agencies, boards, and commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

B. Duration of Contract.

The term of the Contract shall begin and end on the dates specified on the Contract Declarations & Execution Page(s), unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Agency may, in its sole discretion, exercise any applicable extension by giving the Contractor written notice of the extension decision at least sixty (60) days prior to the expiration of the initial term or renewal term.

C. Scope of Work.

The Contractor shall provide Deliverables that comply with and conform to the Specifications.

D. Compensation

1. Pricing. The Contractor will be compensated in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work described in the Special Terms. The Contractor shall submit, on the frequency established on the Contract Declarations & Execution Page(s) an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and in conformance with Iowa Code 8A.514. The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

2. The State has established rules for limitations on reimbursement expenses. Please reference Department of Administrative Services - State Accounting Enterprise Procedure 210-245 (accessible on the internet) for limits on travel expenses.

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

4. Setoff Against Sums Owed by the Contractor. In the event that Contractor owes the State any sum under the terms of this Contract, any other contract or agreement, pursuant to a judgment, or pursuant to any law, the State may, in its sole discretion, set off any such sum against: (1) any sum invoiced by, or owed to, Contractor under this Contract, or (2) any sum or amount owed by the State to Contractor, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under any applicable laws governing setoff.

E. Termination.

1. Termination for Cause by the Agency. The Agency may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- i. Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- ii. Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- iii. Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- iv. Contractor terminates or suspends its business;
- v. Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- vi. Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;

- vii. The Agency determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Agency or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
 - viii. Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
 - ix. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
 - x. Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:
 - a. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - b. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
 - c. Making an assignment for the benefit of creditors;
 - d. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or
 - e. Taking any action to authorize any of the foregoing. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.
- 2. Termination upon Notice.** Following thirty (30) days written notice, the Agency may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all.
- 3. Termination Due to Lack of Funds or Change in Law.** Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:
- i. The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
 - ii. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or
 - iii. If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or
 - iv. If the Agency's duties, programs or responsibilities are modified or materially altered; or
 - v. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract. The Agency shall provide Contractor with written notice of termination pursuant to this section.
- 4. Limitation of the State's Payment Obligations.** In the event of termination of this Contract for any reason by either party (except for termination by the Agency pursuant to Section E.1), the Agency shall pay only those amounts, if any, due and owing to Contractor hereunder for Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and

for which the Agency is obligated to pay pursuant to this Contract; provided however, that in the event the Agency terminates this Contract pursuant to Section E.3, the Agency's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section E.4 in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

- i. The payment of unemployment compensation to Contractor's employees;
- ii. The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- iii. Any costs incurred by Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- iv. Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract;
- v. Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

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

- i. Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Agency may require.
- ii. Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.
- iii. Cooperate in good faith with the Agency and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
- iv. Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor.
- v. Immediately deliver to the Agency any and all Deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

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

F. Confidential Information.

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

2. No Dissemination of Confidential information. No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter.

Any data supplied by the Agency to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Agency. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Agency. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

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

4. Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the Agency any unauthorized disclosure of confidential information.

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

G. Indemnification.

1. By the Contractor. The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

i. Any breach of this Contract;

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

iii. The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

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

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

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

H. Insurance.

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

2. Types and Amounts of Insurance Required. Unless otherwise requested by the Agency in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract Declarations and Execution Page for each occurrence. In

addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

3. Certificates of Coverage. Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract and any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the Agency. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Agency. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

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

I. Project Management & Reporting.

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

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

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

- i. Any event not within the control of the Contractor or the Agency that accounts for the problem;
- ii. Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;
- iii. Damages incurred as a result of any party's failure to perform its obligations under this Contract; and
- iv. Any request or demand by one party that another party believes is not included within the terms of this Contract.

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

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

- i. **Written Request.** The Agency shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.
- ii. **The Contractor's Response.** The Contractor shall submit to the Agency a firm cost proposal for the requested change order within five (5) business days of receiving the change order request.
- iii. **Acceptance of the Contractor Estimate.** If the Agency accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract.

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

J. Legislative Changes.

The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold the Agency liable in any manner for the resulting changes. The Agency shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Agency's right to terminate the Contract pursuant to the termination provisions.

K. Intellectual Property.

1. Ownership and Assignment of Other Deliverables. Contractor agrees that the State and Agency shall become the sole and exclusive owners of all Deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by Agency, upon completion or termination of this Contract, Contractor will immediately turn over to Agency all Deliverables not previously delivered to Agency, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Agency.

2. Waiver. To the extent any of Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

3. Further Assurances. At the Agency's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in Section K.1.

L. Warranties.

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

2. Contractor represents and warrants that: (i) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and

convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party; (ii) Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and (iii) the Agency shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

3. Contractor represents and warrants that: (i) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (ii) the Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the Agency's request and at the Contractor's sole expense: (i) procure for the Agency the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to the Agency all fees, charges and any other amounts paid by the Agency with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

4. Contractor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Special Terms. During the Warranty Period Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five (5) business days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the Agency's satisfaction, Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

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

perform the services as warranted, Contractor shall reimburse the Agency any fees or compensation paid to Contractor for the unsatisfactory services.

6. Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

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

M. Acceptance Testing.

Except as otherwise specified in the Scope of Work, all Deliverables shall be subject to the Agency's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be performed by Contractor with respect to any Deliverable, Contractor shall deliver a written notice to the Agency certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Agency to conduct Acceptance Tests; provided, however, that Contractor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Agency. At the Agency's request, Contractor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency. Within a reasonable period of time after the Agency has completed its Acceptance Testing, the Agency shall provide Contractor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Agency determines that a Deliverable satisfies its Acceptance Tests, the Agency shall provide Contractor with notice of Acceptance with respect to such Deliverable. If the Agency determines that a Deliverable fails to satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the Agency provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall correct and repair such Deliverable and submit it to the Agency within ten (10) days of Contractor's receipt of notice of Non-acceptance so that the Agency may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Agency determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Contractor has attempted to correct or repair pursuant to this section, that such Deliverable fails to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to:

(i) require Contractor to correct and repair such Deliverable within such period of time as the Agency may specify in a written notice to Contractor;

(ii) refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable);

(iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Agency's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Agency to correct such Deficiencies; or

(iv) terminate this Contract and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section E.1 of this Contract, the Agency may terminate this Contract pursuant to this section without providing Contractor with any notice or opportunity to cure provided for in Section E.1. The Agency's right to exercise the foregoing rights and remedies, including termination of this Contract, shall remain in effect until Acceptance Tests are successfully completed to the Agency's satisfaction and the Agency has provided Contractor with written notice of Final Acceptance. If the Agency determines that all Deliverables satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Final Acceptance with respect to such Deliverables. Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Agency's rights to enforce the terms of this

Contract or require performance in the event Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable(s).

N. Contract Administration.

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

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

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

4. Compliance with the Law. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when providing Deliverables under this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, 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 this Contract. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC chapter 4. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

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

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

7. Non-Supplanting Requirement. To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and

activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

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

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

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

11. Use of Third Parties. The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Agency in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Agency reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

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

13. Assignment and Delegation. Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber, any payments that may or will be made to the Contractor under this Contract.

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

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

16. Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

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

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

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

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

i. At the time it is actually received; or,

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

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

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

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

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

24. Authorization. Contractor represents and warrants that:

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

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

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

26. Records Retention and Access. The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

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

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

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

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

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

27. Audits. Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Agency if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Agency that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. Contractor shall provide the Agency with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

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

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

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

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

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

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

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

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

35. Certification regarding sales and use tax. By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the Agency may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

36. Right to Address the Board of Directors or Other Managing Entity. The Agency reserves the right to address the Contractor's board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Agency determines appropriateness.

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

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

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

40. Immunity from Liability. Every person who is a party to the Contract is hereby notified and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

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

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

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

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

EXHIBIT B

System Payment Schedule

Upon commencement of the Equipment Lease-Purchase Agreement (the "Lease"), Motorola (or its assignee under the Lease) will deposit the lease proceeds applicable to the System contract price into an escrow account. Motorola will receive State-approved disbursements from the escrow account to pay the System price as major project milestones are successfully completed.

For further clarification, the State agrees to approve major project Deliverables by providing a signature on a milestone certificate for Deliverables received and accepted by the State. Motorola will submit an invoice referencing the accepted Deliverables and corresponding payment milestone amounts per the below schedule along with an escrow disbursement document which must be approved by the State prior to any withdrawal from the escrow account by Motorola.

Milestone	Amount	Billed Per Site
1. Completion of the DDR	\$ 2,037,129.86	
2. Completion of the microwave path surveys and frequency coordination *	\$ 4,074,259.72	\$ 48,503.09
3. Completion of the Site Design Packages *	\$ 6,111,389.58	\$ 72,754.64
4. Completion of civil work *	\$ 8,148,519.43	\$ 97,006.18
5. Completion of Staging	\$ 10,185,649.29	
6. Installation of equipment *	\$ 6,111,389.58	\$ 72,754.64
	\$	
7. System Acceptance	\$ 4,074,258.54	
System Total	\$ 40,742,596.00	

*Motorola will invoice for these milestones on a site-by-site basis, if applicable. Milestones will be billed based on 84 sites, equal amounts.

Motorola reserves the right to make partial shipments of Equipment and to invoice the State upon shipment of such Equipment. If additional Equipment is purchased, the State will be invoiced as Equipment ships.

Exhibit D-3

STATEMENT OF WORK

ASTRO 25 SYSTEM UPGRADE AGREEMENT II (SUA II)

1.0 Description of Service and Obligations

- 1.1 Motorola shall provide software enhancement releases to the ASTRO 25 SYSTEM for the 3-year Warranty Period and the 7-year maintenance period.
- 1.2 As major system releases become available, Motorola agrees to provide the State with the software, hardware and implementation services required to execute one system infrastructure upgrade for their ASTRO 25 system in each of the five consecutive two-year periods during the Term provided an upgrade is available and offered by Motorola during the applicable two-year period. Additionally, if purchased, the Security Update Service (SUS) coverage is defined in Exhibit D-1 (Supplement 18 of the Proposal).
- 1.3 The parties agree that the State will have, at their option, the choice of upgrading in either Year 1 or Year 2 of the coverage period.
- 1.4 Motorola agrees to provide minor software upgrades, known as "patch releases", which may include commercial Operating Software ("OS") and application software patches and service pack updates when and if available. Currently, the parties acknowledge that Motorola's service includes Microsoft Windows and Server OS, Red Hat Linux, Sun Solaris and any Motorola software service packs that may be available. Motorola agrees to provide only patch releases that have been analyzed, pre-tested, and certified in a dedicated ASTRO 25 test lab to ensure that they are compatible and do not interfere with the ASTRO 25 network functionality. Corresponding 3rd Party software and operating system patches will be released quarterly upon successful completion of the regular test cycle or at Motorola's discretion. Once a patch release has been validated as safe for deployment on the radio network, Motorola agrees to install and deploy it for the State pursuant to the Security Update Service Statement of Work.
- 1.5 The parties agree that ASTRO 25 system release upgrades are considered "major" upgrades if they include commercial OS and application software updates as well as Motorola system release software. System releases shall be pre-tested and certified in Motorola's Systems Integration Test lab. ASTRO 25 system releases shall improve the system functionality and operation from previous releases and may include some minor feature enhancements. At Motorola's option, system releases may also include significant new feature enhancements as optional features. The SUA II does not include coverage for new optional feature software or hardware. Optional features may be offered for purchase. If the optional features cannot be separated from the upgrade, they will be included at no additional cost to the State.
- 1.6 The parties agree to the Eligible System Release Upgrade Paths available to the State as per the system release upgrade chart referenced and incorporated in Appendix A. If additional upgrade releases are offered during the Term of the Agreement that were not included in Appendix A of this statement of work, Motorola shall offer them to the State at no additional charge.
- 1.7 Motorola agrees that this Agreement entitles the State to past software versions for the purpose of downgrading product software to a compatible release version.

- 1.8 Motorola agrees that the following ASTRO 25 system release software for the following products are covered under this Agreement: base stations, site controllers, comparators, routers, LAN switches, servers, dispatch consoles, NICE IP logging recorder, NICE replay stations (Scenario Replay and Inform Lite), network management terminals, Network Fault Management (NFM) products, network security devices such as firewalls and intrusion detection sensors, and associated peripheral infrastructure software.
- 1.9 Product programming software such as Radio Service Software ("RSS"), Configuration Service Software ("CSS"), and Customer Programming Software ("CPS") are also covered under this Agreement.
- 1.10 The parties agree that the SUA II makes available the subscriber radio software releases that are shipping from the factory during the SUA II coverage period. The parties further agree that new subscriber radio options and features not previously purchased are excluded from SUA II coverage. Additionally, subscriber software installation and reprogramming are excluded from the ASTRO 25 SUA II coverage.
- 1.11 Motorola agrees to provide hardware version updates and/or replacements necessary to upgrade the system to an eligible system release with an equivalent level of functionality once in each of the five consecutive two-year periods during the Term provided an upgrade is available and offered by Motorola during the applicable two-year period. Hardware will be upgraded and/or replaced if required to maintain the existing feature & functionality of the eligible system release. The parties agree that any updates to hardware versions and/or replacement hardware required to support new features or those not specifically required to maintain existing functionality are not included unless they are included as part of a system upgrade that is not available without these elements.
- 1.12 Motorola agrees that the following hardware components are eligible for full product replacement when necessary per the eligible system release upgrade and if originally provided by Motorola:
 - 1.12.1 Servers
 - 1.12.2 PC Workstations
 - 1.12.3 Routers
 - 1.12.4 LAN Switches
- 1.13 Motorola agrees that the following hardware components are eligible for board-level replacement when necessary per the eligible system release upgrade. The parties agree that "board-level replacement" is defined as any Field Replaceable Unit ("FRU") for the products listed:
 - 1.13.1 GTR 8000 Base Stations
 - 1.13.2 GCP 8000 Site Controllers
 - 1.13.3 GCM 8000 Comparators
 - 1.13.4 MCC 7500 Console Operator Positions
 - 1.13.5 STR 3000 Base Stations
 - 1.13.6 Quantar Base Stations
 - 1.13.7 Centracom Gold Elite Console Operator Interface Electronics
 - 1.13.8 Centracom Gold Elite Central Electronics Banks
 - 1.13.9 Ambassador Electronics Banks
 - 1.13.10 Motorola Gold Elite Gateways
 - 1.13.11 ASTROTAC Comparators
 - 1.13.12 PSC 9600 Site Controllers

1.13.13 PBX Switches for Telephone Interconnect

1.13.14 NFM/NFM XC/MOSCAD RTU

- 1.14 The ASTRO 25 SUA II does not cover all products. Refer to section 2.0 for exclusions and limitations.
- 1.15 Motorola agrees to provide implementation services necessary to upgrade the system to an eligible system release with an equivalent level of functionality once in each of the five consecutive two-year periods during the Term provided an upgrade is available and offered by Motorola during the applicable two-year period. The parties agree that any implementation services that are not directly required to support the system upgrade are not included. The parties further agree that implementation services necessary for system expansions and/or new features or functionality that are implemented concurrent with the system upgrade are not included.
- 1.16 As major system releases become available, Motorola Agrees to provide the following software design and technical resources necessary to complete system release upgrades once in each of the five consecutive two-year contract periods during the Term provided the upgrade is available and offered by Motorola during the applicable two-year period:
- 1.16.1 Review infrastructure system audit data as needed.
 - 1.16.2 Identify additional system equipment needed to implement a system release, if applicable.
 - 1.16.3 Complete a proposal defining the system release, equipment requirements, installation plan, and impact to system users.
 - 1.16.4 Advise the State of probable impact to system users during the actual field upgrade implementation.
 - 1.16.5 Program management support required to perform the system upgrade.
 - 1.16.6 Field installation labor required to perform the system upgrade.
 - 1.16.7 Upgrade operations engineering labor required to perform the system upgrade.
- 1.17 The parties agree that the ASTRO 25 SUA II pricing is based on the system configuration outlined in Appendix B. The parties further agree that this configuration is to be reviewed annually on the contract renewal date. Any change in system configuration as requested by the State may require an ASTRO 25 SUA II price adjustment.
- 1.18 The parties agree and acknowledge that the ASTRO 25 SUA II applies only to system release upgrades within the ASTRO 25 7.x platform.
- 1.19 Motorola agrees to issue the Software Maintenance Agreement ("SMA") bulletin on an annual basis and post it in soft copy on a designated extranet site for the State's access. Standard and optional features for a given ASTRO 25 system release are listed in the SMA bulletin.
- 1.20 The parties agree that all services described in this SOW are available during the Standard Business Day unless otherwise agreed to by Motorola.

1.21 Coverage Continuity.

- 1.21.1 The parties acknowledge and agree that the ASTRO 25 SUA II requires continuous coverage beginning within (90) days after the expiration of system warranty. Should the State delay purchase of an ASTRO 25 SUA II beyond (90) days from System warranty expiration or elect to discontinue the ASTRO 25 SUA II and later decide to reinstate coverage, additional payment(s) will be necessary to cover the period for which coverage was discontinued or delayed. The total of payments for lapses in coverage will not exceed 3 years in equivalent ASTRO 25 SUA II coverage.

1.22 The State agrees that it shall:

- 1.22.1 Contact Motorola upon receiving the SMA bulletin to engage the appropriate Motorola resources for a system release upgrade.
- 1.22.2 Provide or purchase labor to implement optional system release features or system expansions.
- 1.22.3 Provide high-speed internet connectivity at the zone core site(s) for use by Motorola to perform remote upgrades and diagnostics during the upgrade period.
- 1.22.4 Properly store and make available Motorola-supplied hardware and software required to perform software upgrade services needed for installation of the system release.
- 1.22.5 Inform system users of software upgrade plans and scheduled system downtime. Perform appropriate system backups and make them readily available during the installation of the system release.
- 1.22.6 Assist Motorola in the preparation of a Customer Support Plan before system acceptance and provide all information necessary to complete the Customer Support Plan.
- 1.22.7 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide software upgrade services.

2.0 Exclusions and Limitations

- 2.1 The parties agree that systems that have non-standard configurations that have not been supplied and installed by Motorola are specifically excluded from the ASTRO 25 SUA II unless otherwise agreed in writing by the parties and added to this SOW.
- 2.2 The parties acknowledge and agree that the ASTRO 25 SUA II does not cover the following products:
 - NICE Full Inform
 - MCC5500 Dispatch Consoles
 - MIP5000 Dispatch Consoles
 - Plant/E911 Systems
 - MOTOBRIDGE Solutions
 - ARC 4000 Systems
 - Motorola Public Sector Applications Software ("PSA")
 - Custom SW, CAD, Records Management Software
 - Data Radio Devices
 - Mobile computing devices such as Laptops
 - Non-Motorola two-way radio subscriber products
 - Genesis Products
 - Point-to-point products such as Microwave terminals and association multiplex equipment

- 2.3 The parties further agree that the ASTRO 25 SUA II does not cover any hardware or software supplied to the State by any Motorola business sector other than Motorola Solutions and/or purchased directly from a third party, unless specifically included in this SOW.
- 2.4 The parties agree that the ASTRO 25 system release upgrades include limited security updates issued by Microsoft, Solaris and Red Hat certified with each individual system release.
- 2.5 The parties agree that upgrades for equipment add-ons or expansions during the term of the contract are not included in the coverage of this SOW unless otherwise agreed to by Motorola.

3.0 Special provisions

- 3.1 The State acknowledges that if its System has a Special Product Feature, additional engineering may be required to prevent an installed system release from overwriting the Special Product Feature. Upon request, Motorola will determine whether a Special Product Feature can be incorporated into a system release and whether additional engineering effort is required. If additional engineering is required Motorola will provide it at no cost to the State.
- 3.2 The State acknowledges that they may use the software (including any System Releases) only in accordance with the applicable Software License Agreement. The SUA II Statement of Work is not intended to modify or terminate an existing Software License Agreement. The SUA II or services rendered by Motorola does not alter Motorola's software intellectual property rights.
- 3.3 Maintenance services provided during the Term under another Statement of Work include repair or replacement of hardware or software necessary due to defects that are not corrected by the system release, including repair and replacement of defects resulting from any nonstandard or improper use or conditions or from unauthorized installation of software.
- 3.4 Motorola may suspend or terminate the ASTRO 25 SUA II if the following conditions apply:
 - The State fails to pay Motorola any fees for the ASTRO 25 SUA II when due
 - The State breaches the Software License Terms
 - The State's rights to use the software under the Software License Terms are terminated
 - The State replaces its Motorola System with a system from another manufacturer

Appendix A – ASTRO 25 Eligible System Release Upgrade Paths

Release Date	Platform Release	Available Upgrade Paths	
Oct-05	R7.0	Direct Upgrade to Current Release	
Jun-06	R7.1		
Dec-06	R7.2		
Mar-07	R7.1.1		
Dec-07	R7.4		
Jun-08	R7.5		
Dec-08	R7.6		
Jun-09	R7.7		
Jan-10	R7.8	N/A	
Dec-10	R7.9	7.13	
Aug-11	R7.11	7.14	
Mar-12	R7.12	N/A	
Nov-12	R7.13	7.14	7.15
Nov-13	R7.14	7.15	7.16 (planned)
Nov-14	R7.15	7.16 (planned)	7.17 (planned)
Nov-15	R7.16 (planned)	7.17 (planned)	7.18 (planned)
Nov-16	R7.17 (planned)	7.18 (planned)	7.19 (planned)

The information contained herein is provided for information purposes only and is intended only to outline Motorola's presently anticipated general technology direction. The information in the roadmap is not a commitment or an obligation to deliver any product, product feature or software functionality and Motorola reserves the right to make changes to the content and timing of any product, product feature or software release. Prices for any future product or software included herein will be separately negotiated when and if such product or software becomes available.

The most current eligible system release upgrade paths can be found in the most recent SMA bulletin.

Appendix B - System Pricing Configuration

This configuration is to be reviewed annually on the contract renewal date. If Motorola needs to change quantities listed herein in order to meet the requirements of the RFP, Motorola shall be responsible for all associated costs. If there are changes in system configuration as a result of State-initiated change orders, the State will be responsible for any required ASTRO 25 SUA II price adjustment.

CORE	
Master Site Configuration	M3
Zones in Operation (Including DSR and Dark Master Sites)	3
Zone Features: IV&D, TDMA, Telephone Interconnect, CNI, HPD, CSMS, IA, POP25, Text Messaging, Outdoor	12
RF System	
Voice RF Sites & RF Simulcast Sites (Including Prime Sites)	76
Repeaters/Stations (FDMA)	0
Repeaters/Stations (TDMA)	300
HPD RF Sites	0
HPD Stations	0
Dispatch Console System	
Dispatch Sites	8
Gold Elite Operator Positions	0
MCC 7500 Operator Positions (GPIOM)	0
MCC 7500 Operator Positions (VPM)	19
Conventional Channel Gateways (CCGW)	20
Conventional Site Controllers (GCP 8000 Controller)	8
Logging System	
Number of AIS Servers	3
Number of Voice Logging Recorder	6
Number of Logging Replay Clients	19
Network Management and MOSCAD NFM	
Network Management Clients	3
MOSCAD NFM Systems	1
MOSCAD NFM RTUs	75
MOSCAD NFM Clients	3
Fire Station Alerting (FSA)	
FSA Systems	0
FSA RTUs	0
FSA Clients	0
Fire Station Alerting (FSA)	
Computing and Networking Hardware (for SUA I/SUA II, actual replacement qty may be less than shown)	
Workstations - High Performance	6
Workstations - Mid Performance	46
Servers - High Performance	18
Servers - Mid Performance	4
LAN Switch - High Performance	9
LAN Switch - Mid Performance	126
Routers	123

APPENDIX C – HIGH-SPEED CONNECTIVITY SPECIFICATIONS

Connectivity Requirements

- The minimum supported link between the core and the zone is a full T1
- Any link must realize or a sustained transfer rate of 175 kBps / 1.4 Mbps or better, bidirectional
- Interzone links must be fully operational when present
- Link reliability must satisfy these minimum QoS levels:
 - Port availability must meet or exceed 99.9% (three nines).
 - Round trip network delay must be 100 ms or less between the core and satellite (North America) and 400 ms or less for international links
 - Packet loss shall be no greater than 0.3%
 - Network jitter shall be no greater than 2 ms
- The network requirements above are based on the SLA provided for Sprint Dedicated IP Services as of April, 2012. It is possible other vendors may not be able to meet this exact SLA, so these cases must be examined on a case-by-case basis.

**Exhibit E
System Acceptance Certificate**

Agency: State of Iowa, by and through the Iowa Department of Administrative Services

Project Name: Iowa Statewide 700 MHz P25 LMR Network

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and the State acknowledge that:

1. The Acceptance Tests as defined in section 2.2 of this Agreement have been successfully completed.
2. The System is accepted.

State of Iowa:

Signature: _____

Print Name: _____

Title: _____

Date: _____

Motorola:

Signature: _____

Print Name: _____

Title: _____

Date: _____

**Exhibit F
Final Acceptance Certificate**

Agency: State of Iowa, by and through the Iowa Department of Administrative Services

Project Name: Iowa Statewide 700 MHz P25 LMR Network

This Final Acceptance Certificate memorializes the occurrence of Final Acceptance. Motorola and the State acknowledge that:

Motorola has provided and Customer has received and accepted all Deliverables. Motorola has performed all other work required for Final Acceptance, and has met all responsibilities required.

State of Iowa:

Signature: _____

Print Name: _____

Title: _____

Date: _____

Motorola:

Signature: _____

Print Name: _____

Title: _____

Date: _____

Exhibit G

Additional Terms

The Parties agree to the following additional terms of the Agreement:

1. MOTOROLA GENERAL STATEMENT OF WARRANTY AND GUARANTEE

1.1 Motorola represents warrants and guarantees that the System solution as represented in the Proposal meets the technical requirements of the RFP. If it does not, Motorola represents, warrants and guarantees that it shall make any upgrades, changes, and repairs as necessary to bring the System to the level represented in the Proposal without any additional charge to the State. Notwithstanding the foregoing, Motorola shall not be responsible for System performance deficiencies caused by the addition of frequencies at System sites by entities other than Motorola that cause RF interference or intermodulation, or for Customer changes to load usage or configuration outside the Specifications; provided, however, that Motorola agrees to support the State in identifying potential mitigation approaches and recommended courses of action to resolve such issues.

1.2 Motorola represents, warrants and guarantees that the System costs as provided in the Payment Schedule shall constitute a firm, fixed price, and that the only increases (if any) in prices will be those related to State-initiated change orders, which costs shall be negotiated by the Parties.

1.3 If a lease agreement between Motorola and a third party for Equipment or tower facilities included as part of the System is terminated during the Term of the Agreement, Motorola represents, warrants and guarantees that will ensure the integrity, compliance, and performance of the independent System without interruption and at no additional cost to the State.

2. THIRD PARTIES AND THE SYSTEM

2.1 Existing Project 25 compliant systems may be connected to the State Platform via control stations or ISSI.

2.2 Motorola will not execute a contract with non-State agencies to add them to the System without receiving either an Inter-Local Agreement (ILA) or Memorandum Of Understanding (MOU) executed between the State and the non-state agency, or written notification from the State that an ILA or MOU is not required. As non-State agencies are added to the System, the non-State agencies and Motorola will have separate Statements of Work and Acceptance Tests as necessary; the State shall have no responsibility for any costs related to such work or Acceptance Tests.

3. SYSTEM UPGRADE AND MAINTENANCE

Motorola shall provide System Upgrade Assurance 2 (SUA2) services and maintenance services as described in Exhibits D-1, D-2 and D-3 during the Term of the Agreement and the Equipment Lease Purchase Agreement. The SUA2 Statement of Work in Exhibit D-3 will take precedence over the SUA2 Statement of Work in the Proposal.

4. ADDITIONAL SERVICES DURING DETAILED DESIGN REVIEW

Motorola will provide fleetmapping assistance and not less than 100 programming templates through Detailed Design Review.

Amendment Number 1 to Communications System Agreement

WHEREAS, Motorola Solutions, Inc. ("Motorola") and the State of Iowa ("State") executed a Lease Communications System Agreement on August 13, 2015 ("Agreement"); and,

WHEREAS, Motorola and the State intended to enter into a separate agreement ("Equipment Lease-Purchase Agreement") to finance the State's payment of the System price under the Agreement; and,

WHEREAS, the State has decided not to enter into an Equipment Lease-Purchase Agreement as of this date; and,

NOW, THEREFORE, in consideration of the foregoing, the parties agree to amend the Lease Communications System Agreement as follows:

- 1) In Section 2.6, Definitions, replace the definition of Effective Date in entirety with the following:

"The Effective Date" means the date upon which the last Party executes this Amendment 1 to the Agreement.

- 2) In Section 2.8, Definitions, delete the definition of Equipment Lease-Purchase Agreement in entirety.

- 3) In Section 2.17, Definitions, replace the definition of State Equipment in entirety with the following:

"State Equipment" means the Equipment owned by the State that is transferred to Motorola following execution of this Agreement and utilized by Motorola to support operation of the System during the term of the Agreement. The State Equipment will be returned to the State as provided in Section 3.10 of this Agreement.

- 4) Replace Section 3.10, Purchase of State Equipment, in entirety with the following:

Motorola shall acquire the State Equipment for the prices as provided in Motorola's Cost Proposal (pp. 32-33) promptly upon execution of this Amendment Number 1. Possession and control of the State Equipment as included in the System will revert to the State at the end of the Term (as defined in Section 3.3) of this Agreement.

- 5) Replace Section 4, Performance Schedule, in entirety with the following:

The Parties will perform their respective responsibilities in accordance with the mutually agreed upon Performance Schedule. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance. The Customer will not be issuing a Purchase Order (PO) or any other Notice to Proceed (NTP) for the entirety of this contract. Payments can be processed solely against this contract and in accordance to Exhibit B attached.

- 6) Replace Section 5.1, Contract Price, in entirety with the following:

The Contract Price in U.S. dollars is \$58,852,002. The System price is \$40,742,596. The Maintenance, including Software Upgrade Agreement price for the Term is \$16,207,448. The Tower Rental for the Term is \$1,901,958. Motorola will invoice the State in accordance to Exhibit B as defined in this amendment, and the State will approve invoices for Deliverables as provided in Section D.1 of the General Terms. The maintenance price and tower rental are payable annually in advance of each applicable year. For the State's reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800. Motorola agrees that upon System Acceptance, the State shall have sole and exclusive possession and control of the System, including without limitation the State Equipment, with the exception of any software that may be included in the System, to which the State will have a non-exclusive, fully paid up right and license pursuant to the terms included in this Agreement.

Amendment Number 1 to Communications System Agreement

- 7) Replace Section 5.2, Title and Risk of Loss, in entirety with the following:

Title to the System, excluding the State Equipment, will pass to the State upon System Acceptance. Title to Software will not pass to the State at any time. Motorola shall bear the risk of loss for the Equipment, including the State Equipment, during the Term, or until title passes to the State, whichever occurs first. Motorola will pack and ship all Equipment in accordance with best commercial practices.

- 8) Replace Exhibit A, Section K, Intellectual Property, in entirety with the following:

1. Assignment of Other Deliverables. Title to the System shall pass in accordance with Section 5.2 of the Contract. Contractor agrees that the State and Agency shall have the sole and exclusive possession and control of all remaining Deliverables as they are delivered with the exception of any software that may be included in the Deliverables (which will be licensed pursuant to the terms included in this Agreement). Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables as they are delivered. Contractor represents and warrants that, if and when transferred, the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. Unless otherwise requested by Agency, upon completion or termination of this Contract, Contractor will immediately turn over to Agency all Deliverables not previously delivered to Agency, provided the State has paid for such Deliverables. Notwithstanding the foregoing, any and all preexisting intellectual property rights shall remain fully vested in the original owner of those rights and nothing herein shall be construed as a transfer of those rights.

- 9) Replace Exhibit A, Section N, Contract Administration, subsection N.45, Ownership and Title, in entirety with the following:

45. Title. Title to the System shall pass in accordance with Section 5.2 of the Contract. Upon delivery under this Agreement, the State shall have sole possession and control of the remaining Deliverables (aside from any software that may be included in the Deliverables which shall be licensed pursuant to the terms included elsewhere in this Agreement); Contractor, its licensors, and its suppliers retain all of their intellectual proprietary rights in any form in the Deliverables, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Deliverables. All intellectual property developed, originated, or prepared by Contractor in connection with providing the Deliverables, remains vested exclusively in Contractor, and the State will not have any shared development or other intellectual property rights. The license of software Deliverables is described in the Contract.

- 10) Replace Exhibit B, System Payment Schedule, in entirety with the attached Exhibit B dated December 12, 2015.

- 11) In Exhibit G, Additional Terms, replace Section 3, System Upgrade and Maintenance, in entirety with the following:

Motorola shall provide System Upgrade Assurance 2 (SUA2) services and maintenance services as described in Exhibits D-1, D-2 and D-3 during the Term of the Agreement. The SUA2 Statement of Work in Exhibit D-3 will take precedence over the SUA2 Statement of Work in the Proposal.

Amendment Number 1 to Communications System Agreement

12) In Section 2.7, Definitions, replace the definition of Equipment in entirety with the following:

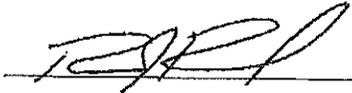
"Equipment" means the equipment that the State purchases from Motorola under this Agreement including without limitation the State Equipment as enhanced, rebuilt, upgraded, and replaced as part of the System. Equipment that is to be purchased by the State as part of the system is described in the Equipment List.

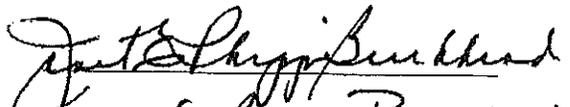
The effective date of this Amendment is the date upon which the last Party executes this Amendment.

BY SIGNING BELOW, both parties hereto accept this Amendment Number 1 to the Lease Communications System Agreement. Except as amended herein, all the terms and conditions of the Lease Communications System Agreement remain unchanged and in full force and effect.

Motorola Solutions, Inc.

State of Iowa

BY: 

BY: 

NAME: Robert Rummel

NAME: JANET E. HIPPS Burkhead

TITLE: MSSSI Vice President

TITLE: Director, DAS

DATE: 12/23/2015

DATE: 12/23/2015

EXHIBIT B
December 12, 2015
System Payment Schedule

The State agrees to approve major project Deliverables by providing a signature on a milestone certificate for Deliverables received and accepted by the State. Motorola will submit an invoice referencing the accepted Deliverables and corresponding payment milestone amounts per the below schedule. The dates listed below are estimated based on the current agreed upon project schedule. If the dates change significantly from estimated date, the State and Motorola will agree to an updated payment schedule.

Milestone	Amount	Billed Per Site	Estimated Invoice Date
1. Completion of Staging	\$ 4,383,000.00		12/31/2015
2. Completion of civil work *	\$ 15,147,000.00	\$ 180,321.43	7/1/2016
3. Installation of equipment *	\$ 17,148,337.46	\$ 204,146.87	7/1/2016
4. Beneficial Use	\$ 2,037,129.86		12/31/2016
5. System Acceptance	\$ 2,027,128.68		6/1/2017
System Total	\$ 40,742,596.00		

*Motorola will invoice for these milestones on an ongoing, site-by-site or level of effort basis. Milestones will be billed based on 84 sites, equal amounts.

Motorola will not ship equipment or invoice state prior to dates in Payment schedule without it being mutually agreed upon. If additional Equipment is purchased, the State will be invoiced as Equipment ships.