

# Attachment C: PROCUREMENT PROVISIONS

## AFDO Terms & Conditions

The following are presented for Vendors to be aware of as the terms and conditions for this RFP.

### 1. Contract

The successful Vendor(s) will be required to enter into a written contract with AFDO and its member states. The Vendor(s) agrees to accept the provisions which are incorporated into this section of the RFP.

### 2. Contract Documents

This response event, any amendments, the response and any response amendments of the Vendor shall be incorporated into the written contract, which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- i. Written modifications to the executed contract;
- ii. Written contract signed by the parties;
- iii. The Vendor Response documents, including any and all amendments; and
- iv. Vendor's written offer submitted in response to the Response Event as finalized.

### 3. Contract Extension

AFDO may extend the contract annually up to four (4) years to assist in the management of procurement and development of the IT solution.

### 4. Initial Term – Work Commencement

The Vendor shall commence work under this Contract by January 3, 2023, or earlier if states and AFDO are in agreement, and shall last one year. After expiration of the initial term, AFDO shall have the option to extend/renew the Contract in its sole discretion by providing written notice to Vendor(s) at least one-hundred and eighty (180) days before the expiration of the initial term. The initial term and any extensions and renewals shall be collectively referred to as the “**Term.**”

### 5. Captions

The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

### 6. Contract Formation

No contract shall be considered to have been entered into by AFDO until all required signatures and certifications have been rendered and a written contract has been signed by all parties.

### 7. Statutes

Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted,

then on the application of either Party the contract shall be amended to make such insertion or correction.

#### 8. Termination for Cause

AFDO may terminate its contract with successful Vendor(s), or any part of its contract, for cause under any one of the following circumstances:

- i. the Vendor(s) fails to make delivery of goods or services as specified in this contract;
- ii. the Vendor(s) provides substandard quality or workmanship lacking the degree of skill and judgment normally exercised by recognized professional firms performing services of the same or substantially similar nature;
- iii. the Vendor(s) fails to perform any of the provisions of this contract, or
- iv. the Vendor(s) substantially falls behind on progress as defined in the Statement of Work (SOW) which is included as part of the executed contract as to endanger performance of this contract in accordance with its terms.

AFDO shall provide Vendor(s) with written notice of the conditions endangering performance. If the Vendor(s) fails to remedy the conditions within fourteen (14) days from the receipt of the notice (or such longer period as AFDO may authorize in writing), AFDO shall issue the Vendor(s) an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

#### 9. Termination for Convenience

AFDO may terminate performance of work under this contract in whole or in part whenever, for any reason, if it is determined to be in the best interest to do so. AFDO may terminate performance of work under this contract in whole or in part, if funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by AFDO/FDA and/or any State participant (regardless of the source of funding or revenues) to make any payment under the Contract re insufficient or unavailable for any other reason as determined by AFDO in its sole discretion.

In the event that AFDO elects to terminate this contract pursuant to this provision, it shall provide the Vendor(s) written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Vendor(s) shall continue to perform any part of the work that may have not been terminated by the notice.

#### 10. Rights and Remedies

a. If this contract is terminated, AFDO, in addition to any other rights provided for in this contract, may require the Vendor(s) to transfer title and deliver in the manner and to the extent directed, any completed materials. AFDO shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

b. In the event of termination, the Vendor(s) shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by AFDO subject to any offset for actual damage.

c. The rights and remedies provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

#### 11. Remedies Not Involving Termination

AFDO, under its sole discretion, may exercise one or more of the following remedies with advance notification to the Vendor(s) allowing the Vendor(s) a mutually established timeline to remedy the problem, in addition to other remedies available to it.

#### 12. Suspend Performance Remedy

AFDO, under its sole discretion, may suspend Vendor(s)'s performance with respect to all or any portion of this Contract pending necessary corrective action as specified by AFDO without entitling Vendor(s) to an adjustment in price/cost or performance schedule. Vendor(s) shall promptly cease performance and incurring costs in accordance with the AFDO directive. AFDO shall not be liable for costs incurred by Vendor(s) after the suspension of performance under this provision.

#### 13. Withhold Payment Remedy

AFDO, under its sole discretion, may withhold payment or a portion of payment to Vendor(s) until correction in Vendor(s)'s performance is satisfactorily made and completed. Such withholding shall be held in escrow to be paid only if full compliance is met.

#### 14. Deny Payment Remedy

Payment shall be denied for those obligations not performed that, due to Vendor(s)'s actions or inactions, cannot be performed or, if performed, would be of no value to AFDO, provided that any denial of payment shall be reasonably related to the value to AFDO of the obligations not performed.

#### 15. Removal Remedy

Notwithstanding any other provision herein, AFDO may demand immediate removal of any of Vendor(s)'s employees, agents or sub-Vendors whom AFDO deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or AFDO best interest.

#### 16. Intellectual Property Remedy

If Vendor(s) infringes on a third-party patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Vendor(s) shall, at AFDO's option (a) obtain for the State or Vendor(s) the right to use such products and services; (b) replace any Goods, Services, or other products involved with non-infringing products or modify them so that they become non- infringing; or (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefor to AFDO.

#### 17. Debarment Remedy

a. Since Federal Funds will be used to pay for this support, the Vendor(s) that receives the award must be registered in SAM (System for Award Management), a database that contains information about all approved government Vendors. If a Vendor(s) wants to respond to government contracting jobs, it must be registered in this database. Registration can be done by going to **Error! Hyperlink reference not valid.** and following the instructions. Once registered with SAM, Vendor(s) will receive

a CAGE code (Commercial and Government Entity Code), which is the identifier that represents Vendor(s) in the SAM database.

b. In addition, a business cannot have an exclusion record which identifies parties excluded from being awarded Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. Exclusions are also referred to as suspensions and debarments. Vendors that are excluded can also be found in SAM.

#### 18. Hold Harmless

a. The Vendor(s) shall indemnify AFDO against any and all loss or damage arising out of or related to the Vendor's negligence in the performance of services under this contract and for infringement of any copyright, patent, or other intellectual property occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

b. AFDO shall not be precluded from receiving the benefits of any insurance the Vendor(s) may carry which provides for indemnification for any loss or damage to property in the Vendor's custody and control, where such loss or destruction is to AFDO property. The Vendor(s) shall do nothing to prejudice AFDO's right to recover against third parties for any loss, destruction or damage to property.

c. Vendors shall bear all costs associated with preparing and submitting responses to this RFP and the subsequent evaluation phase. AFDO will, in no way, be responsible for these costs, regardless of the conduct or outcome of the prequalification process.

#### 19. Force Majeure

Neither party shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Party so long as the Party affected immediately notifies the other Party and takes reasonable steps to resume performance as soon as possible Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Vendor's employees, and freight embargoes. In the event a Force Majeure Event continues for a period of fifteen (15) business days, AFDO may terminate the Contract by providing written notice to Vendor(s).

#### 20. Assignment

a. Neither Party shall assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the other Party. Each Party may reasonably withhold consent for any reason. This includes all sub-contractors or other entities eligible to receive remuneration under this agreement.

b. This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Vendor(s) without the prior written consent of AFDO.

#### 21. Third Party Beneficiaries

This contract shall not be construed as providing an enforceable right to any third Party.

#### 22. Waiver

Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by AFDO shall not constitute a waiver.

### 23. Injunctions

Should AFDO be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of AFDO, Vendor(s) shall not be entitled to make or assert claim for damage by reason of said delay.

### 24. Sub-Contractor

The Vendor(s) shall be the sole source of contact for the contract. AFDO will not subcontract any work under the contract to any other firm and will not deal with any sub-contractors. without AFDO's prior written consent The Vendor(s) is totally responsible for all actions and work performed by its sub-contractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any sub-contractors.

### 25. Independent Contractor

a. Both Parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one Party shall not be construed to be the employees or agents of the other Party for any purpose whatsoever.

b. The Vendor(s) accepts full responsibility for payment of unemployment insurance, workers' compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

c. Vendor(s), Vendor(s) subcontractors, and Vendor(s) Personnel shall not hold itself out as an employee or agent of any AFDO/FDA or any State participants. Except as otherwise provided in the Contract, Vendor(s) shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Vendor(s) Personnel and Vendor(s) subcontractors to perform and provide Deliverables hereunder. Vendor(s) Personnel are not eligible for, and Vendor(s) shall ensure Vendor(s) Personnel never claim they are eligible for or otherwise entitled to any federal/state employee benefits, including retirement benefits, insurance coverage, or the like. Vendor(s) Personnel shall not be considered employees of AFDO/FDA or any State participants for any purpose, including for federal or State tax purposes. AFDO/FDA and State participants shall have no right or authority to direct or control Vendor(s) Personnel with respect to the performance or provisioning of Deliverables under the Contract, or with respect to any other matter, except as otherwise provided by the Contract. During any engagement under the Contract, Vendor(s) Personnel may perform work on behalf of, and provide deliverables to, Third Parties, and may market and advertise their services to Third Parties, so long as such activities do not: (a) violate any terms or conditions of the Contract; (b) adversely affect the performance or provisioning of Deliverables hereunder or satisfaction of any other duties, responsibilities, or obligations set forth herein; (c) create an actual or potential conflict of interest; (d) violate any intellectual property rights or interests of AFDO/FDA or any State participants.

## 26. Worker Misclassification

The Vendor(s) and all lower tiered sub-contractors under the Vendor(s) shall properly classify workers as employees rather than independent Vendors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

## 27. Immigration and Reform Control Act of 1986 (IRCA)

All Vendors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Vendor(s) as well as any sub-contractor. The usual method of verification is through the Employment Verification (I-9)

## 28. Form

a. With the submission of this response, the Vendor(s) hereby certifies without exception that such Vendor(s) has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at AFDO's option, may subject the contract to termination for cause and any applicable damages.

b. Unless provided otherwise herein, all Vendors are expected to be able to produce for AFDO any documentation or other such evidence to verify Vendor's IRCA compliance with any provision, duty, certification or like item under the contract.

## 29. Insurance

During the term of the Contract, Vendor(s) shall obtain and maintain, and ensure that each subcontractor shall obtain and maintain, Workers' Compensation insurance as required by state statute, and General Liability, Protected Information, Professional Liability Insurance, Public Liability, Cyber, and Property Damage Insurance at no less than \$1,000,000 each occurrence and \$2,000,000 general aggregate. AFDO/FDA and the State Participants shall be named as additional insureds on all commercial general liability policies, and the insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Vendor(s) (which notices shall be forwarded to AFDO within seven days of Vendor's receipt of such notice. All insurance policies secured or maintained by Vendor(s) or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Vendor(s) or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers. Vendor(s) shall provide certificates evidencing Vendor's insurance coverage required in this Contract within seven (7) Business Days following the Effective Date of the Contract with AFDO.

## 30. Conflict of Interest

The Vendor(s) shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are providing services involving this contract or services similar in nature to the scope of this contract to AFDO. Furthermore, the Vendor(s) shall not knowingly employ,

during the period of this contract or any extensions to it, any employee who has participated in the making of this contract until at least two years after his/her termination of employment.

### 31. Nondiscrimination and Workplace Safety

The Vendor(s) agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.

### 32. Confidentiality

Vendor(s) and its employees, agents, approved subcontractors may have access to Confidential Information maintained by AFDO to the extent necessary to carry out its responsibilities under the Contract. Confidential Information shall at all times remain the property of AFDO/FDA and/or the State Participants, who shall at all times retain exclusive rights thereto and ownership thereof. Vendor(s) shall hold any and all Confidential Information in strictest confidence and will use and permit use of Confidential Information solely for the purposes of the Contract. Without limiting the foregoing, Vendor(s) shall use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of Confidential Information disclosed in connection with the Contract as Vendor(s) employs with respect to its own confidential information and data of a like importance. Vendor(s) may disclose or provide access to its responsible employees who have a need to know and may make copies of Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder. Vendor(s) will designate one individual who shall remain in charge of all Confidential Information collected, used, or disseminated by Vendor(s) in connection with the performance of the Contract. Vendor(s) shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of the Contract. Vendor(s) and its employees, agents, and any approved subcontractors must execute confidentiality or non-disclosure agreements to obtain access to Confidential Information. Vendor(s) and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any Confidential Information received, collected, maintained, or used in the course of performance of the Contract except for the sole purpose of performing the Services hereunder, subject to the restrictions set forth in the Contract and all applicable state and federal laws, rules and regulations applicable either during the term of the Contract or thereafter. Vendor(s) and its employees, agents, approved subcontractors shall not disclose, sell, assign, lease, or otherwise dispose of any Confidential Information to third-parties or commercially or politically exploit or otherwise use such Information. On the termination or expiration of this contract, Vendor(s) shall not use any of such data or any material derived from the data for any purpose and, where so instructed by AFDO, shall destroy or render it unreadable.

### 33. Environmental Protection

The Vendor(s) shall abide by all federal, state, and local laws, and rules and regulations regarding the protection of the environment. The Vendor(s) shall report any violations to the applicable

governmental agency. A violation of applicable laws or rule or regulations may result in termination of this contract for cause.

#### 34. Care of Property

The Vendor(s) shall be responsible for the proper care and custody of any owned personal tangible property and real property furnished for Vendor's use in connection with the performance of this contract. The Vendor(s) shall reimburse for such property's loss or damage caused by the Vendor(s), except for normal wear and tear.

#### 35. Prohibition of Gratuities

Neither the Vendor(s) nor any person, firm or corporation employed by the Vendor(s) in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any contracting agencies' employees at any time. Further, no other non-disclosed entity or sub-Vendor(s) shall be provided commission or remuneration of any kind as part of this contract.

#### 36. Retention of Records

a. Unless a different period of time is specified in writing, the Vendor(s) agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

b. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

c. The Vendor(s) agrees that authorized representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of using agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be within five (5) business days at no cost to AFDO.

#### 37. Off-Shore Sourcing

Off-shore sourcing is prohibited under this contract. An audit log of employees may be periodically requested showing the assigned project team and their physical location.

#### 38. Indefinite Quantity Contract

This is an open-ended contract between the Vendor(s) and AFDO to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Vendor(s) will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.

#### 39. Prices

Prices shall remain firm for the base term. Prices shall be net delivered, including all trade, quantity, and cash discounts. Any price reductions available during the contract period shall be offered to AFDO. Failure to provide available price reductions may result in termination of the contract for cause. AFDO reserves the right at a later date to accept the pricing on the non-awarded application.



#### 40. Payment

Payment Terms are Net 60 days unless required by state law or policy. NOTE: If the 60th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

- a. Payments shall not be made for costs or items not listed in this contract.
- b. AFDO shall be billed monthly in arrears for services provided under this agreement to AFDO as outlined in the contract.

Invoices shall include such information as is necessary for AFDO to determine the date and exact nature of all expenditures. Each invoice will clearly reference the AFDO Contract Number and be submitted to AFDO's Contract Manager.

12% of invoice payments may be withheld to serve as a holdback escrow that will be paid when the AFDO's Contract Manager provides written acceptance of the associated milestone.

Claims for payment submitted by the Vendor(s) to AFDO for costs due and payable under this Contract that were incurred prior to the expiration date shall be paid to the Contractor, if received by AFDO within ninety (90) days after the expiration date.

Timely payment. Payment by AFDO will be considered timely if it is postmarked or deposited within sixty (60) days of the following, whichever is later:

1. Receipt of properly executed invoice vouchers;
2. Acceptance of deliverables by AFDO

AFDO may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

Payments to Subcontractors: Vendor(s) is solely liable for any and all payments that may be due to Vendor(s) subcontractors pursuant to any subcontract. Vendor(s) shall indemnify and hold harmless AFDO/FDA and any State participants and their officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever (including the reasonable attorneys' fees and the costs, expenses) arising out of, resulting from, or in any way related to Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any Vendor(s) subcontractor.

Cost Reductions and Savings: During the term of the contract, in the event that Vendor(s) secures a lower price for any out-of-pocket materials/costs, Vendor(s) will pass that cost reduction/savings onto AFDO.

#### 41. Federal, State and Local Taxes

Unless otherwise specified, the contracted price shall include all applicable federal, state, and local taxes. The Vendor(s) shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. AFDO is exempt from state sales or use taxes and federal

excise taxes for direct purchases. These taxes shall not be included in the contracted price. Upon request, AFDO shall provide to the Vendor(s) a certificate of tax exemption.

#### 42. Debarment of Vendors

Any Vendor(s) who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, or have its work evaluated for pre-qualification purposes. Vendor(s) shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state Vendor(s). For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in the termination of the contract.

#### 43. Materials and Workmanship

a. The Vendor(s) shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means necessary to complete all the work required by this Contract, within the time specified, in accordance with the provisions as specified.

b. The Vendor(s) shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the Vendor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of AFDO said issue is due to imperfection in material, design, workmanship or Vendor(s) fault.

#### 44. Industry Standards

If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

#### 45. Implied Requirements

All products and services not specifically mentioned in this contract, but which are necessary to provide the functional capabilities described in the Scope of Work, shall be included.

#### 46. Submission of the Response

Submission of the response will be considered presumptive evidence that the Vendor(s) is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the response for all contingencies. Later claims for labor, work, materials, equipment, and tax liability required for any difficulties encountered which could have been foreseen will not be recognized and all such difficulties shall be properly taken care of by Vendor(s) at no additional cost to AFDO.

#### 47. Inspection

Vendor(s) shall permit AFDO or the federal government and any other duly authorized agent of a government agency to audit, inspect, examine, excerpt, copy, and/or transcribe Vendor's records related to this Contract during the Record Retention Period of five (5) years following a termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. AFDO reserves the right to inspect the work at all reasonable times and places during the Contract Term, including any extensions or renewals. If the work fails to conform to the requirements of this Contract, AFDO may require Vendor(s) to promptly bring the work into conformity with Contract requirements, at Vendor's sole expense. If the work cannot be brought into conformance by re-performance or other corrective measures, AFDO may require Vendor(s) to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

#### 48. Monitoring

Vendor(s) shall permit AFDO, the federal government and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Vendor(s) pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by AFDO shall be performed in a manner that shall not unduly interfere with Vendor's performance hereunder.

#### 49. Final Audit Report

If an audit is performed on Vendor's records for any fiscal year covering a portion of the Contract Term, Vendor(s) shall submit a copy of the final audit report to AFDO. Vendor(s) shall ensure the provisions of this paragraph apply to any subcontract related to performance under the Contract. Vendor(s) shall, at Vendor's sole expense, reconstruct any records not preserved or retained as required by this paragraph.

#### 50. Acceptance

No contract provision or use of items by AFDO shall constitute acceptance or relieve the Vendor(s) of liability in respect to any expressed or implied warranties. All deliverables will be reviewed by the AFDO and Vendor's Project Managers prior to final acceptance. If any revisions are needed, AFDO will have ten (10) business days to provide the Vendor(s) with revisions/comments. The Vendor(s) will assume acceptance of the deliverable after 15 business days.

#### 51. Information/Data

Vendor(s) shall make, keep, maintain, and allow inspection and monitoring by AFDO of a complete file of all records, documents, communications, notes, and other written materials, electronic media files, and communications, pertaining in any manner to the work or the delivery of Services or Goods hereunder. Vendor(s) shall maintain such records until the last to occur of: (a) a period of five (5) years after the date this Contract expires or is sooner terminated, or (b) final payment is made hereunder, or (c) the resolution of any pending Contract matters, or (d) if an audit is occurring, or Vendor(s) has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

## 52. Certification of Materials Submitted

The Response document, together with the specifications set forth herein and all data submitted by the Vendor(s) to support its response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of the contract between the Vendor(s) and AFDO. Any written representation covering such matters as reliability of the item(s), the experience of users, or warranties of performance shall be incorporated by reference into the contract.

## 53. Outgoing Transition Assistance

In the event of contract termination or expiration, Vendor(s) shall provide all reasonable and necessary assistance to AFDO to allow for a functional transition to another Vendor(s). Transition Out is included in the SOW and will be accomplished with the existing team and period of performance on the project. All work products completed as part of this contract such as: reports, plan, presentations, notes, shall be transferred electronically to AFDO.

## 54. Corrections and Changes in Work

AFDO may submit a Change Order at any time during the Contract to request a modification to any of the services or Deliverables. If a Change Order does not require Vendor(s) to incur any additional out-of-pocket material costs or expenses, then Vendor(s) will make such modification within ten (10) business days of Vendor's receipt of Change Order. If a Change Order requires that Vendor(s) incur additional material costs or expenses, or if the change cannot be made within ten (10) business days, then Vendor(s) in good faith will provide AFDO with a written, high level, non-binding assessment of such costs and expenses and/or the time required to perform the modifications required by the Change Order, within ten (10) business days of Vendor's receipt of the State of Iowa's Change Order. AFDO will notify Vendor(s) in writing within ten (10) business days after receipt of the Change Order response from Vendor(s) as to whether AFDO wishes Vendor(s) to implement such Change Order based on such response. AFDO will compensate Vendor(s) for implementation of a Change Order in accordance with the terms and conditions of the relevant Change Order, the Contract, and Vendor's statement, as provided prior to Vendor's implementation of the Change Order, if any. Vendor's implementation of a Change Order shall not delay the performance of Services and/or the delivery of Deliverables not reasonably affected by a Change Order.

## 55. Intellectual Property Ownership of Deliverables/Copyright

Vendor(s), Vendor(s) Contractors, and Vendor(s) Personnel (collectively "Vendor(s)") agree that all services performed under the Contract, and all discoveries, inventions, source code, machine code, text images, audio and/or video and other intellectual property created by Vendor(s) ("Deliverables") is being developed for the sole and exclusive use of AFDO/FDA and the respective State Participants, and that Vendor(s) shall retain no right, title, and interest therein, including all copyright, trademark, and other proprietary or intellectual property rights relating thereto. All services performed by Vendor(s) and all work generated in connection therewith is and shall be considered as 'Works Made for Hire' (as defined under the U.S. Copyright Laws) and, as such, is and shall not be owned by Vendor(s).

During and after the term of the Contract, Vendor(s) agrees that to the extent that any Deliverables (or any portion thereof) would not be considered works made for hire under applicable law, Vendor(s) agrees to assign, to AFDO/FDA and/or a state participant as determined by AFDO, the entire right, title, and interest in and to copyrights in all Deliverables and all works based upon, derived from, or incorporating the Deliverables; all copyright applications, registrations, extensions, or renewals relating to all Deliverables and all works based upon, derived from, or incorporating the work product; and all moral rights or similar rights with respect to the work product throughout the world free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests. Vendor(s) shall render all other reasonable assistance to enable AFDO/FDA and/or a state participant to secure patents, copyrights, licenses, and other intellectual property rights related to the Deliverables. Vendor(s) shall not retain any property interests or other rights in the Deliverables and shall not use the Deliverables, in whole or in part, for any purpose, without the prior written consent of AFDO. Immediately upon the request of AFDO, Vendor(s) will deliver to AFDO or destroy, or both, at AFDO's option, all copies of any Deliverables in the possession of Vendor(s).

## 56. Public Information Requests

If a Freedom of Information Act ("FOIA") request is made for a Vendor's Proposal, the Public Copy may be distributed to the public along with the Vendor's Confidentiality Designation Form. The Confidentiality Designation Form is a public document and serves as an explanation for the redactions to the Public Copy. Do not put any trade secret, financial, or proprietary information in the Confidentiality Designation Form.

Vendors must also be aware that at any time during the RFP process and thereafter, AFDO may disclose the entire Private Proposal to the FDA/any State of Governmental Agency upon request, after which time the Proposal will be subject to their respective FOIA laws. AFDO does not guarantee protection of any information which is not submitted as required.

By submitting a Proposal, Vendor(s) forever releases AFDO, FDA and State participants, their officers, and employees from all claims, rights, actions, demands, damages, liabilities, expenses and fees, which arise out of or relate to the disclosure of all, or a portion of Vendor's Proposal submitted under this RFP. Vendor(s) must defend, indemnify and hold the AFDO, FDA and State participants, their officers, and employees harmless, without limitation, from and against all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to any FOIA request, including potential litigation and appeals, related to the portion of Vendor's proposal submitted under this RFP that bidder has identified as a trade secret, or financial or proprietary information.

## 57. Publicity

During the term of the Contract and at all times after the termination or expiration of the Contract, Vendor(s), Vendor(s) subcontractors, and Vendor(s) Personnel shall not make any media release or other public announcement relating to or referring to the Contract without AFDO's prior written consent. Vendor(s), Vendor(s) subcontractors, and Vendor(s) Personnel shall acquire no right to use, and shall not use, without AFDO's written consent, the terms or existence of the Contract, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of AFDO/FDA

and/or the State Participants, their related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; (b) to express or to imply any endorsement of Vendor(s) or Vendor's Deliverables by AFDO/FDA and/or the State Participants; or (c) in any manner other than expressly in accordance with the Contract.

#### 58. Integration

This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either Party.

#### 59. Modification

This contract shall be modified only by the written agreement and approval of the Parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the Parties. Every amendment shall specify the date on which its provisions shall be effective.

#### 60. Severability

If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected, and each provision of this contract shall be enforced to the fullest extent permitted by law.

#### 61. Information Security Requirements

a. The Vendor(s) agrees to follow industry best practices, policies and protocols in regard to security. The Vendor(s) shall comply with all laws and regulations applicable to the use and provision of the services and products. Vendor's security controls must meet all Federal and State laws. Prompt notification will be made to AFDO when any security breach occurs. The Vendor(s) shall respond to any customer security analysis with a remediation plan within 15 calendar days of receipt of such analysis.

b. The Vendor(s) shall use appropriate safeguards to protect the Data from misuse and unauthorized access or disclosure, including; Maintaining adequate physical controls and password protections for any server or system on which the Data is stored, ensuring that Data is not stored on any mobile device (for example, a laptop or smartphone) or transmitted electronically unless encrypted, and taking any other measures reasonably necessary to prevent any use or disclosure of the Data other than as allowed under this agreement.

c. Vendor(s) is to comply with federal, state, and local government standards as applicable for FISMA, HIPAA, FTI IRS 1075, SSA, NDMH, PCI, COBIT for the sharing of data. Additional requirements will be needed for Federal Tax Information, Social Security Information, IRS data, HIPPA data, Criminal Justice Information, and other unique specifications as designated.

#### 62. Restricted Use Information

a. "Restricted Use Information" means information provided to Vendor(s) by or at the direction of AFDO, or to which access was provided to the Vendor(s) by or at the direction of AFDO, in the course of Vendor's performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers). The Vendor(s) shall comply with Standard of Care in the use of this restricted use information as follows:

b. Vendor(s) acknowledges and agrees that, in the course of its engagement by AFDO Vendor(s) may receive or have access to Restricted Use Information. Vendor(s) shall comply with the terms and conditions set forth in this Agreement in its collection, receipt, transmission, storage, disposal, use and disclosure of such Restricted Use Information and is responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of Restricted Use Information under its control or in its possession by all Authorized Persons. Vendor(s) shall be responsible for, and remain liable to, AFDO for the actions and omissions of all Authorized Persons that are not Authorized Employees concerning the treatment of Restricted Use Information as if they were Vendor's own actions and omissions.

c. Restricted Use Information is deemed to be Confidential Information of AFDO and is not Confidential Information of Vendor(s). In the event of a conflict or inconsistency between this Provision and other provisions of this Agreement, the terms and conditions set forth in this Provision shall govern and control.

d. In recognition of the foregoing, Vendor(s) agrees and covenants that it shall:

- i. keep and maintain all Restricted Use Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure;
- ii. use and disclose Restricted Use Information solely and exclusively for the purposes for which the Restricted Use Information, or access to it, is provided pursuant to the terms and conditions of this Agreement, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Restricted Use Information for Vendor's own purposes or for the benefit of anyone other than AFDO, in each case, without AFDO's prior written consent;
- iii. and not, directly or indirectly, disclose Restricted Use Information to any person other than its Authorized Employees/Authorized Persons, including any sub-contractors, agents, outsourcers or auditors (an "Unauthorized Third Party"), without express written consent from AFDO unless and to the extent required by Government Authorities or as otherwise, to the extent expressly required, by applicable law, in which case, Vendor(s) shall (1) notify AFDO before such disclosure or as soon thereafter as reasonably possible; (2) be responsible for and remain liable to AFDO for the actions and omissions of such Unauthorized Third Party concerning the treatment of such Restricted Use Information as if they were Vendor's own actions and omissions; and (3) require the Unauthorized Third Party that has access to Restricted Use Information to execute a written agreement agreeing to comply with the terms and conditions of this Agreement relating to the treatment of Restricted Use Information.

### 63. Award

Award will be by line item or group total, whichever is in the best interest of AFDO.

#### 64. Choice of Law and Choice of Forum

Pennsylvania law shall apply and any actions arising shall take place in the District Court of York County, Pennsylvania. State contracts entered into as part of the associated master agreement will likely use their individual state law as choice of law and typically a choice of forum of the county or parish of their capitol city.