

Appendix N – Contract Terms and Clauses (Contractor’s Exceptions Table)

Please see below Geographic Solutions’ Exceptions Table for the Sample Contract, Additional Terms for Cloud Services Engagements, and Software as a Service Terms and Conditions (also see [Appendix P – SaaS Agreement Redlined Copy](#)).

Section	Proposed Revision	Explanation
Sample Contract		
§4.	Access to Records. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested. <u>Prior to providing copies of any records to the State or its authorized designees, Contractor shall be permitted to designate the appropriate public records exemptions for records.</u>	Revised to give contractor opportunity to avail itself to public records exemptions.
§5(B)	The Contractor shall not <u>Neither party shall</u> assign or subcontract the whole or any part of this Contract without the State’s other party’s prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor’s legal name or legal status so that the changes may be documented and payments to the successor entity may be made.	Revised due to the nature of the services provided which are highly customized for DWD.
§11	Condition of Payment. All services provided by the Contractor under this Contract must <u>be in material compliance with the Contract and performed</u> be performed to the State’s reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to <u>be</u> be unsatisfactory, inconsistent with this <u>in material breach of the</u> Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.	Revised to remove subjective “satisfactory” performance standard.

Section	Proposed Revision	Explanation
§12	Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will <u>be safeguarded against disclosure or discussion</u> not be disclosed to or discussed with third parties without the prior written consent of the State.	Revised to clarify.
§13(B)(2)	Negotiate in good faith a plan with a successor to determine the nature and extent of <u>the delivery of State Data, phase-in, phase-out services required</u> . The plan shall specify a training program and a date <u>the method and date</u> for transferring <u>State Data, and responsibilities for each division of work described in the plan</u> , and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the <u>State Data is timely transferred so that the services called for by this Contract are maintained at the required level of proficiency</u> .	Revised to reflect that Vendor is proposing a SaaS solution.
§13(C)	The Contractor shall allow as many personnel as practicable to remain on the job to help the successor <u>in the transition and delivery of State Data</u> . maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.	Revised to reflect that Vendor is proposing a SaaS solution.
§19	19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the <u>State and the Contractor will enter into discussion as to whether the Contractor will</u> release the selected employee from any non-competition agreements that may be in effect, <u>but the Contractor will have no obligation to agree to such a release</u> . This release will be at no cost to the State or the employee.	Revised to protect the Vendor's ongoing business

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§20	Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster, <u>third-party criminal conduct, terrorist acts, acts of war</u> , or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance.	Revised categories of force majeure event.
§28(A)(1)	Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. <u>The additional coverage required by the State shall not shall not increase Contractor’s cost for the insurance limits as originally required under this Contract by greater than five percent (5%) throughout the life of the Contract. If Contractor’s costs exceed five percent (5%) then Vendor shall notify the State of such increase and the additional insurance coverage shall not be required without Vendor’s prior written consent.</u> The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.	Revised to place cap the increase of insurance coverage where such increase is required without Contractor’s consent.
§29(A)	If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, <u>the State shall have the right to terminate this Contract upon thirty (30) days’ prior written notice. such individual will be promptly replaced with an individual with equal or greater qualifications.</u>	Revised to clarify, because neither party has control over their Key Employees’ employment decisions.
§30	The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors <u>when such services</u> are not in compliance with such applicable standards, laws, rules, or regulations <u>unless the State utilizes the Services.</u>	Revised to clarify.
§35	Order of Precedence; Incorporation by Reference. <u>The following documents are incorporated by into this Contract.</u> Any inconsistency or ambiguity in this Contract shall be	Revised to clarify.

Section	Proposed Revision	Explanation
	resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) RFP #23-72117, (4) Contractor's response to RFP #23-72117—, and (5) attachments prepared by the Contractor including Contractor's License Agreement. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference. Any conflicting terms between the documents identified above shall be resolved by giving the terms of the documents with the higher rank precedence over the lower ranking documents.	
§36(A)	Excluding State Data, Contractor or its licensors shall be and remain the sole and exclusive owner of all deliverables provided under this Contract and all intellectual property rights contained therein ("Contractor IP"). Contractor shall not obtain any ownership rights in State Data, and the State grants Contractor a non-exclusive limited license to use, store, display, transmit, alter and edit State Data for Contractor to perform under this Contract. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.	Revised to protect Contractor's intellectual property, because Contractor is not developing software for the State, instead it is providing the State use and access to its customized commercial off the shelf SaaS solution as contemplated under 37(B).
§40	The Contractor acknowledges that the State will not treat this Contract as containing confidential information and the State will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. <u>The State will treat as confidential all information exempt from disclosure under the State's public records act contained in Contractor's response to RFP #23-72117 and the attachments prepared by the Contractor, including Contractor's License Agreement</u> Use by the public of the information contained in this Contract shall not be considered an act of the State.	Revised to protect Contractor's IP and confidential information, and to protect the security of the SaaS solution.

Section	Proposed Revision	Explanation
§43	Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its <u>material</u> terms and conditions and any written amendments or supplements.	Revised to clarify.
§46(A)(1)	Correct or cure any <u>material</u> breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties	Revised to clarify.
§46(A)(3)	Make progress so as to endanger performance of this Contract <u>evidenced by Contractor's failure to meet two (2) consecutive material milestones for reasons solely attributable to Contractor;</u>	Revised to reference a standard in which to gauge progress.
§46(A)(4)	Perform any of the other provisions of this Contract.	Deleted for consistency with above revisions.
§46(B)	If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.	Revised as State can terminate for reasons other than cause
§49	Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product <u>due to its failure to meet the specification contained within this Contract,</u> or the working relationship with those individuals assigned to work on this Contract <u>due to such individuals' failure to conduct themselves in a professional manner,</u> the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.	Revised to tie dissatisfaction to a standard of conduct.
§50	State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as	Revised to Clarify.

Section	Proposed Revision	Explanation
§4.	contained in 2022 SCM Template) in any way except as follows: <u>proposed revisions contained in Contractor's exceptions table.</u>	
	Access to Records. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested. <u>Prior to providing copies of any records to the State or its authorized designees, Contractor shall be permitted to designate the appropriate public records exemptions for records.</u>	Revised to give contractor opportunity to avail itself to public records exemptions.
§5(B)	The Contractor shall not <u>Neither party shall</u> assign or subcontract the whole or any part of this Contract without the State's other party's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.	Revised due to the nature of the services provided which are highly customized for DWD.
Additional Terms for Cloud Services Engagements		
§1(C)	<p>"Data" means <u>all information, whether in oral, written, or electronic form, created by or in any way originating with the State, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or that in any way originated with the State, in the course of using and configuring the Services.</u></p> <p>any data—including the selection, arrangement, and organization of such data—entered, uploaded, processed in an application or services, or otherwise provided to the Contractor by the State in connection with the Contract.</p>	Revised for consistency with the definition of Data in the SaaS Terms.

Section	Proposed Revision	Explanation
§1(D)	D. "Data Breach" means <u>any actual unauthorized access to or acquisition of Data containing personal information as defined under IC 4-1-11-3.</u> (a situation where the Contractor knows, or should reasonably suspect, that unauthorized access to or acquisition of the Data has occurred.	Revised to clarify.
§4	Data Privacy and Security. The Contractor understands that it is responsible for <u>ensuring safeguarding</u> the confidentiality and integrity of the Data <u>against unauthorized access or acquisition</u> . To this end, the Contractor agrees to the following, except as is otherwise provided in the SOW or an SLA:	Revised to clarify.
§5(A)	Contract Audit. The State shall be permitted to conduct audits to confirm that the Contractor is adhering to the terms of the Contract – including these Cloud Terms, the SOW, and an SLA – at the State's discretion and expense. The audits may be conducted by the State or by a third party. <u>The State shall provide at least 30 days' notice to the Contractor in advance of any such audit, and the Contractor shall take reasonable steps to facilitate it – including by making its staff available to the State or the State's auditor.</u>	Revised to give notice similar to Section 5(B)
§6(B)(1)(¶2)	If the Data Breach is the result of the Contractor's or its agents' failure to <u>implement and maintain the safeguards</u> adhere to its data privacy and security obligations under Section 4, above, the Contractor shall cover the costs that the State incurs associated with providing notice of the Data Breach to affected individuals, regulators, and others <u>if required by federal and/or state law</u> ; with providing credit-monitoring services for affected individuals <u>if required by federal and/or state law</u> ; and with providing a website, a toll-free telephone number, and a call center for affected individuals to contact <u>if required by federal and/or state law</u> .	Revised to reflect that the remedies provided herein are applicable to certain types of Data and not the Data in its entirety.
§8(A)	A. Limitation. The Contractor's per-event liability under the Contract shall be limited to three times the sum that the State will pay <u>or has paid</u> to the Contractor for the Service <u>during the twelve months immediately preceding the date when the conduct giving rise to the claim first occurred</u> , with the understanding that multiple losses stemming from the same root cause shall constitute a single event. <u>Notwithstanding the foregoing,</u>	Revised to clarify.

Section	Proposed Revision	Explanation
	<u>Contractor's entire liability under this Contract shall not exceed the total fees paid to Contractor during the Initial Term of this Contract. FOR ALL OTHER CONTRACTUAL CLAIMS,</u> IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES – INCLUDING LOSS OF PROFIT, INCOME, OR SAVINGS – EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS.	
§8(B)	Exclusion. The limitation described above does not apply with respect to (1) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of the Contractor; (2) any act or omission of any employee, agent, or subcontractor of the Contractor <u>in breach of the Contract</u> ; (3) claims for bodily injury, death, or real and tangible property damage; (4) the Contractor's indemnification obligations; (5) the Contractor's data privacy obligations; (6) the Contractor's data security obligations; and (7) the Contractor's data availability obligations. The Contractor acknowledges and agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors – including their gross negligence or willful misconduct.	Revised to clarify.
§10	Alterations, Modifications, Changes, Deletions. The provisions of these Cloud Terms have not been altered, modified, changed, or deleted in any way, except in the following paragraphs: <u>proposed revisions contained in Contractor's exceptions table.</u>	Revised to clarify.
Software as a Service Terms and Conditions (See Appendix P – SaaS Agreement Redlined Copy)		
Definition-Data Breach	Data Breach means any actual or reasonably suspected unauthorized access to or acquisition of <u>unencrypted Encrypted Data personal information as defined under IC 4-1-11-3.</u>	Revised to clarify because only unencrypted Data would result in disclosure/acquisition of Data.
§2(d)	At no time shall any Data or processes — that either belong to or are intended for the use of State be copied, disclosed, or retained by the contractor or any party related to the contractor for subsequent use in any transaction that does not include the State.	Revised to protect Contractor's intellectual property.

Section	Proposed Revision	Explanation
§2(e)	The contractor shall not use any information <u>Data</u> collected in connection with the Services for any purpose other than fulfilling its obligations under the contract.	Revised to protect Contractor's intellectual property.
§5(b)	Unless stipulated otherwise in the Statement of Work, if a Data Breach is a result of the contractor's breach of its contractual obligation to encrypt Data -or otherwise prevent its release as reasonably determined by the State , the contractor shall bear the costs associated with: (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators, or others required by federal and/or state law, or as otherwise agreed to in the Statement of Work; (3) a credit monitoring service required by federal and/or state law, or as otherwise agreed to in the Statement of Work; (4) a website or a toll-free number and call center for affected individuals required by federal and/or state law — all of which shall not amount to less <u>more</u> than the average per-record per-person cost calculated for data breaches in the United States (in, for example, the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach); and (5) complete all corrective actions as reasonably determined by contractor based on root cause and on advice received from the Indiana Office of Technology.	Revised to remove subjective standard and rely on objective standards set forth in the contract.
§10	Contract Audit: The contractor shall allow the State to audit conformance to the contract terms. The State may perform this audit or contract with a third party at its discretion and at the State's expense. <u>The State shall provide at least -thirty (30) days' notice to the Contractor in advance of any such audit, and the Contractor shall take reasonable steps to facilitate it – including by making its staff available to the State or the State's auditor.</u>	Revised to clarify.
§20	State Additional Terms and Conditions Revision Declaration: The clauses in this Exhibit have not been altered, modified, changed, or deleted in any way except for the following clauses which are named <u>in Appendix L – Contract Terms and Clauses (Contractor's Exceptions Table): Proposed Revisions Contained in Contractor's Exceptions Table.</u> below:–	Revised to clarify.

NOTE: In addition to the terms and conditions outlined above for the SaaS Agreement, please see [Appendix P – SaaS Agreement Redlined Copy](#) as requested in the RFP.