STATE OF IOWA

REQUEST FOR PROPOSAL (RFP)

COVER SHEET

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Title Of RFP:	e-Library Resources	**RFP No.:**	0321-286-01
Agency:	State Library of Iowa		
State seeks to purchase:	e-Library Resources	**Available to Political Subdivisions?**	Yes
Number of mos. or yrs. of the initial term of the contract:	Five (5) Years	**Number of possible annual extensions:**	Five (5)
Anticipated initial Contract term start date:	July 1, 2021	**Anticipated initial Contract term end date:**	June 30, 2026

State Issuing Officer:

Name: Steve Dawson
Mailing Address: Office of the Chief Information Officer
200 E. Grand Avenue
Des Moines, IA 50309

Phone: (515) 330-8085
Email: steve.dawson@iowa.gov

PROCUREMENT TIMETABLE—There are no exceptions to any deadlines for Respondents; however, Agency reserves the right to change the dates/times, in its sole discretion.

Event or Action:	**Date/Time:**
State Posts Notice of RFP on TSB website	March 1, 2021
State Issues RFP to Bid Opportunities website	March 3, 2021
Respondent's written questions, requests for clarification, and suggested changes due:	5:00 pm CST March 16, 2021
Agency's written response to RFP questions, requests for clarifications, and suggested changes due:	11:59 pm CST March 23, 2021
Proposals Due:	3:00 pm CST April 8, 2021
Anticipated Date to issue Notice of Intent to Award:	May 7, 2021
Anticipated Date to execute Contract:	June 11, 2021

Important Websites:	**URL:**
Website where any Amendments/ Addenda to this RFP will be posted:	https://ocio.iowa.gov/information-technology-procurement/open-it-bid-opportunities
Key Requirements:	
Number of Copies of Proposals Required to be Submitted:	1 Original, 1 Public (redacted) if necessary
Firm Proposal Terms The minimum Number of Days following the deadline for submitting proposals that the Respondent guarantees all proposal terms, including price, will remain firm:	180 Days

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Attachment #1: Cost Proposal
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Attachment #3: Authorization to Release Information Letter
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SECTION 1 INTRODUCTION

1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals from Responsible Respondents to provide the goods and/or services identified on the RFP cover sheet and further described immediately below and in Section 4 of this RFP to the Agency identified on the RFP cover sheet, and any other Agency(-ies) or other governmental entity(-ies) of the State making purchases from the Contract.

This RFP is designed to provide Respondents with the information necessary for the preparation of competitive Proposals. The RFP process is for the Agency's benefit and is intended to provide the Agency with competitive information to assist in the selection process. Each Respondent is responsible for determining all factors necessary for submission of a comprehensive Proposal.

1.2 Definitions

In addition to any terms specifically defined elsewhere herein, for the purposes of this RFP and any resulting Contract, the following terms shall mean:

"Agency" means the agency identified on the RFP cover sheet that is issuing the RFP and, as used and to the extent used in the Contract, any other agency(ies) or governmental entity(ies) of the State that purchases from the Contract once executed.

"Contract" means the contract(s) entered into with the successful Respondent(s) as identified on the RFP Cover Sheet and more fully described in Section 6 (Contract Terms and Conditions & Administration).

"Consortium" means the consortium of Iowa public libraries called "Bridges: Iowa's e-Library" that provides their members with access to electronic books, periodicals, and other materials provided by and through the Contractor.

"Contractor" or **"Vendor"** means the successful Respondent to this RFP that ultimately enters into a Contract as a result of this RFP.

"Proposal" means the Respondent's proposal submitted in response to the RFP.

"Respondent" means a potential Contractor submitting a Proposal in response to this RFP.

"Responsible Respondent" means a Respondent that has the capability in all material respects to perform the scope of work and specifications of the Contract. In determining whether a Respondent is a Responsible Respondent, the Agency may consider various factors including, but not limited to: the Respondent's competence and qualifications to provide the goods or services requested; the Respondent's integrity and reliability; the past performance of the Respondent, Respondent's past contract terminations, litigation, or debarments; Respondent's criminal history; Respondent's financial stability; and the best interests of the Agency and the State.

"Responsive Proposal" means a Proposal that complies with the material provisions of this RFP.

"RFP" means this Request for Proposals and any attachments, exhibits, schedules or addenda hereto.

"State" means the State of Iowa, including the Agency identified on the Contract Declarations & Execution Page(s), and all state agencies, boards, and commissions, and any political subdivisions making purchases from the Contract as permitted by this RFP.

"Terms and Conditions" means, whichever of the following is applicable:

a. The General Terms and Conditions for Services Contracts or Goods Contracts as referenced and linked to on the RFP cover page; or

b. If neither the General Terms and Conditions for Service Contracts or Goods contracts are linked to on the RFP cover page, any terms and conditions attached to and accompanying this RFP as may be more fully described in Section 6 (Contract Terms and Conditions);

c. Any additional terms and conditions set forth in Section 6 (Contract Terms and Conditions & Administration).

"User" means any person who engages with the proposed solution, including but not limited to library patrons, library workers, Consortium representatives, or Agency employees.

1.3 Background Information

The State Library of Iowa ("Agency") seeks proposals on behalf of a consortium of Iowa libraries to provide downloadable eBooks, audiobooks, and streaming video to the library's patrons, or library card holders of Iowa libraries.

The Agency is a division of the Iowa Department of Education, with the mission of strengthening Iowa's libraries and providing greater information access for Iowans by working to improve library services in Iowa and delivering specialized information services to both state government and to Iowans. A goal of the Agency's strategic plan is to provide all Iowans access to quality information resources and the assistance needed to select and use the information for personal, professional, and academic success. The Agency facilitates that goal by supporting the consortium called Bridges: Iowa's e-library (the "Consortium"), which offers Iowans the ability to obtain and use resources available electronically through their local library.

Currently, the Consortium consists of 459 public libraries, 6 community college libraries, 1 Area Education Agency (an educational support agency that provides specialty services to public schools), the Iowa Library for the Blind and Physically Handicapped, and 1 public school district. A list of existing members will be provided upon request.

Circulation figures for the past three years are below:

Bridges circulation	2020	2019	2018
all ebook formats	1,223,061	917,874	817,718
all audiobook formats	845,616	725,479	600,915
video	2,967	1,581	2,248
magazine	67,143	30,645	13,551

The Agency seeks proposals for a shared online collection of downloadable audiobooks, eBooks, streaming video, and magazines that will be available to patrons of Iowa's public libraries. The libraries participating in the Consortium will share in the cost of the service and product(s). The current collection is a growing compendium of what would be considered popular titles which includes fiction, genre fiction, series, patron requests, and nonfiction. The foundation of the collection are audiobooks (MP3 and streaming) and ebooks (Kindle, EPUB, PDF, and streaming) but there are also magazines and streaming video available. Although the bulk of the collection

caters to an adult audience, ongoing development of juvenile and young adult collections is important.

Respondents are encouraged to creatively address the current needs of the Consortium, and to propose solutions that would be effective in reaching the project's goal.

In its current contract, the Agency only pays for the platform fee for the solution. The Consortium's individual member libraries pay for all their own materials costs directly to the vendor. This arrangement is preferred for the next solution.

SECTION 2 ADMINISTRATIVE INFORMATION

2.1 Read, Understand, and Comply

It is the Respondent's responsibility to read this entire document, review all attachments, and any addenda thereto, and to comply with all requirements specified herein, regardless of where such requirements appear within the collective documentation forming this RFP.

2.2 Respondent Registration and Approval

Every Respondent wishing to do business with the state shall register as a vendor. Every vendor shall register prior to submitting a response to a solicitation except in the case of an emergency procurement when the vendor shall register prior to filling an order or as soon as practicable. Only properly registered vendors are entitled to payment. Vendors are encouraged to register electronically using the vendor on-line system. A vendor may also register by directly contacting the department or an agency initiating a procurement. Vendors are responsible for maintaining current and accurate registration information.

2.3 Issuing Officer

The Issuing Officer identified in the RFP cover sheet is the sole point of contact regarding the RFP from the date of issuance until a Notice of Intent to Award the Contract is issued.

2.4 Restriction on Bidder Communication

From the issue date of this RFP until a Notice of Intent to Award the Contract is issued, Respondents may contact only the Issuing Officer. The Issuing Officer will respond only to written questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted as provided in Section 2.8 (Questions, Requests for Clarification, and Suggested Changes). Oral questions related to the interpretation of this RFP will not be accepted. There may be no communication regarding this RFP with any State employee other than the Issuing Officer, except at the direction of the Issuing Officer or as otherwise noted in the RFP. Respondents may be disqualified if they contact any State employee other than the Issuing Officer about the RFP, except that Respondents may contact the State Targeted Small Business Office on issues related to the preference for Targeted Small Businesses. This section shall not be construed as restricting communications related to the administration of any contract currently in effect between a Respondent and the State.

2.5 Downloading the RFP from the Internet

The RFP document and any addenda to the RFP will be posted at:

https://ocio.iowa.gov/information-technology-procurement/open-it-bid-opportunities

The posted version of the RFP is the official version. The Agency will only be bound by the official version of the RFP document(s). The Respondent is advised to check the website periodically for amendments/addenda to this RFP, particularly if the Respondent downloaded the RFP from the Internet as the Respondent may not automatically receive addenda. It is the Respondent's sole responsibility to ensure that any previously downloaded documents are in fact the most up to date and to check for any addenda to posted documents.

2.6 Procurement Timetable

The dates provided in the procurement timetable on the RFP cover sheet are provided for informational and planning purposes. The Agency reserves the right to change the dates. If the Agency changes any of the deadlines for Respondent submissions, the Agency will issue an addendum to the RFP.

2.7 Pre-Proposal Conference

If the RFP cover sheet indicates a pre-proposal conference will be held in conjunction with this RFP, it will be held at the date, time, and location listed on the RFP cover sheet. The purpose of the pre-proposal conference is to discuss with prospective Respondents the work to be performed and allow prospective Respondents an opportunity to ask questions regarding the RFP. Oral discussions at the pre-proposal conference shall not be considered part of the RFP unless confirmed in writing by the Agency and incorporated into this RFP. The conference may be recorded. Questions asked at the conference that cannot be adequately answered during the conference may be deferred. A copy of the questions and answers will be sent to Respondents who submit a letter of intent to propose and will be posted in the form of an addendum at https://ocio.iowa.gov/information-technology-procurement/open-it-bid-opportunities.

If the RFP cover sheet indicates the pre-proposal conference is mandatory, the Agency may reject Proposals submitted by Respondents who do not attend the pre-proposal Conference.

2.8 Questions, Requests for Clarification, and Suggested Changes

Respondents are invited to submit written questions and requests for clarifications regarding the RFP. Respondents may also submit suggestions for changes to the specifications of this RFP. The questions, requests for clarifications, or suggestions must be in writing and received by the Issuing Officer on or before the date and time listed on the RFP cover sheet. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, Respondent shall reference the page and section number(s). The Agency will send written responses to questions, requests for clarifications, or suggestions received from Respondents on before the date listed on the RFP cover sheet. The Agency's written responses will become an addendum to the RFP. If the Agency decides to adopt a suggestion that modifies the RFP, the Agency will issue an addendum to the RFP. Failure to raise a question, request for clarification, or suggestion through this process shall constitute a waiver of any objection or argument as part of any subsequent vendor appeal; this waiver is intended to ensure the State is able to correct any material issues or errors in an orderly, efficient fashion and in a manner that is fair to all prospective Contractors.

The Agency assumes no responsibility for oral representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP through an addendum. Utilize RFP Attachment 7 (Question Submission Template) for submitting questions related to this RFP.

2.9 Costs of Preparing the Proposal

The costs of preparation and delivery of the Proposal are solely the responsibility of the Respondent.

2.10 Submission of Proposals

The Issuing Officer must receive all required copies of the Proposal at the email address identified on the RFP cover sheet before the "Proposals Due" date and time listed on the RFP cover sheet.

This is a mandatory requirement and will not be waived by the Agency. Any Proposal received after this deadline will be rejected and the Respondent notified. It is the Respondent's responsibility to ensure that the Proposal is received prior to the deadline.

Respondents must furnish all information necessary to enable the Agency to evaluate the Proposal. Oral information provided by the Respondent will not be considered part of the Respondent's Proposal unless it is reduced to writing.

2.11 Release of Claims

By submitting a Proposal, the Respondent agrees that it will not bring any claim or cause of action against the Agency based on any misunderstanding concerning the information provided in the RFP or concerning the Agency's failure, negligent or otherwise, to provide the Respondent with pertinent information in this RFP.

2.12 Disposition of Proposals

Except as otherwise provided herein, all Proposals submitted in response to this RFP become the property of the State and shall not be returned to the Respondent. Once the Agency issues a Notice of Intent to Award the Contract, the contents of all Proposals will be public records available for inspection by interested parties, except for information for which Respondent properly requests confidential treatment according to the process set forth below, in accordance with Form 22, and pursuant to applicable exceptions or grounds for confidential treatment provided in Iowa Code Chapter 22 or other applicable law.

2.13 Form 22 - Request for Confidentiality

The Agency's release of public records is governed by Iowa Code chapter 22 and corresponding fair information practices rules. Respondents are encouraged to familiarize themselves with Chapter 22 and applicable fair information practices rules before submitting a Proposal. The Agency will copy and produce public records upon request as required to comply with Chapter 22 and will treat all information and materials submitted by a Respondent as non-confidential records unless Respondent requests specific parts of the Proposal be treated as confidential at the time of the submission as set forth herein (including but not limited to in accordance with the terms, conditions, and requirements set forth in Form 22, attached hereto) AND the information ***does in fact qualify for confidential treatment*** under Iowa or other applicable law.

Failure to request that information or materials be treated as confidential in accordance with this section and/or Form 22 shall relieve the Agency and state personnel from any responsibility for maintaining the information or materials in confidence. Respondents may not request confidential treatment with respect to information or sections of their Proposals specifically identified by the Agency in the RFP as being non-confidential or subject to public disclosure. A Respondent's request for confidentiality that does not comply with the terms, conditions, or requirements of this section or Form 22 is grounds for rejecting a Proposal or denying a request for confidential treatment. Blanket requests to maintain an entire Proposal as confidential will be categorically rejected.

If the Agency receives a request for information or materials related to a Proposal marked as confidential, or if a judicial or administrative proceeding is initiated to compel the release of such materials or information, Respondent shall, at its sole expense, appear in such action and defend its request for confidentiality. If, upon reasonable notice to Respondent, Respondent fails to appear to defend its request for confidentiality, the Agency may release the information or material, or otherwise bill the Respondent for any costs or expenses incurred in defending the

same (including but not limited to the reasonable time and value of the Iowa Attorney General's Office or other attorney or law firm utilized by the Agency or the State). Additionally, if the Respondent fails to comply with the confidentiality process set forth herein or in Form 22, Respondent's request for confidentiality is overbroad or unreasonable, Respondent fails to supply the Agency with sufficient information to determine whether Respondent's request for confidential treatment is founded, or Respondent rescinds its request for confidential treatment, the Agency may release such information or material with or without providing advance notice to the Respondent and with or without affording the Respondent the opportunity to obtain an order restraining its release from a court of competent jurisdiction. Respondent waives any claims it may have against the Agency or the State of Iowa related to the confidential treatment of any information or materials submitted as part of the RFP process that result, in whole or in part, from any deficiencies with or related to compliance with this section or Form 22, or that otherwise result from Respondent's failure to comply with the terms, conditions, or requirements of this RFP or Form 22. Respondent further waives any claim for attorney's fees or other costs or expense incurred by Respondent in connection with Respondent's defense of any claim for confidential treatment of its Proposal or the contents thereof.

FORM 22 MUST BE COMPLETED AND INCLUDED WITH RESPONDENT'S PROPOSAL. COMPLETION AND SUBMITTAL OF FORM 22 IS REQUIRED WHETHER THE PROPOSAL DOES OR DOES NOT CONTAIN INFORMATION FOR WHICH CONFIDENTIAL TREATMENT WILL BE REQUESTED. FAILURE TO SUBMIT A COMPLETED FORM 22 WILL RESULT IN THE PROPOSAL BEING CONSIDERED NON-RESPONSIVE AND ELIMINATED FROM EVALUATION.

2.14 Copyright Permission

By submitting a Proposal, the Respondent agrees that the Agency may copy the Proposal for purposes of facilitating the evaluation of the Proposal or to respond to requests for public records. By submitting a Proposal, the Respondent consents to such copying and warrants that such copying will not violate the rights of any third party. The Agency shall have the right to use ideas or adaptations of ideas that are presented in Proposals.

2.15 Amendment and Withdrawal of Proposal

The Respondent may amend or withdraw and resubmit its Proposal at any time before the Proposals are due. The amendment must be in writing, signed by the Respondent and received by the time set for the receipt of Proposals. Electronic mail and faxed amendments will not be accepted. Respondents must notify the Issuing Officer in writing prior to the due date for Proposals if they wish to completely withdraw their Proposals.

2.16 Late Proposals

Late proposals, regardless of cause, will not be opened or considered for evaluation, and will be disqualified from further consideration. It is the Respondent's sole responsibility to ensure delivery at the stated location and time.

2.17 Proposal Opening

The Agency will open Proposals after the deadline for submission of Proposals has passed. The Proposals will remain confidential until the Agency has issued a Notice of Intent to Award a Contract. *See Iowa Admin. Code r. 129—10.15*. However, the names of Respondents who submitted timely Proposals will be publicly available after the Proposal opening. The announcement of Respondents who timely submitted Proposals does not mean that an individual Proposal has been deemed technically compliant or accepted for evaluation.

2.18 Rejection of Proposals

The Agency may reject outright and not further evaluate a Proposal for reasons including, without limitation:

a) The Respondent fails to deliver the Cost Proposal in a separate email.

b) The Respondent acknowledges that a mandatory specification of the RFP cannot be met.

c) The Respondent states that it will be unable to meet an aspect of the Scope of Work, or does not include information necessary to substantiate that it will be able to meet any Scope of Work, specification, requirement, or otherwise indicates it will be unable to provide any services or goods required by the RFP.

d) The Respondent's Proposal changes a material specification of the RFP or the Proposal is not compliant with the mandatory specifications of the RFP.

e) The Respondent's Proposal limits, or attempts to limit, the rights of the Agency.

f) The Respondent, in the Agency's sole opinion, fails to include information necessary to substantiate that it will be able to meet a specification of the RFP.

g) The Respondent fails to timely respond to the Agency's request for information, documents, or references.

h) The Respondent fails to include Proposal Security, if required.

i) The Respondent fails to include any signature, certification, authorization, stipulation, disclosure or guarantee as required by this RFP.

j) The Respondent, in the Agency's sole opinion, presents the information requested by this RFP in a format inconsistent with the instructions of the RFP, including that Respondent fails to comply with the RFP's formatting requirements so that Respondent's Proposal cannot be fairly compared to other proposals, or otherwise fails to comply with the specifications or requirements of this RFP.

k) The Respondent initiates unauthorized contact regarding the RFP with a State employee other than the Issuing Officer.

l) The Respondent, in the Agency's sole opinion, provides misleading or inaccurate responses.

m) The Respondent's Proposal is, the Agency's sole opinion, materially unbalanced.

n) There is insufficient evidence (including evidence submitted by the Respondent and evidence obtained by the Agency from other sources) to satisfy the Agency that the Respondent is a Responsible Respondent, including but not limited to information of or concerning Respondent's past performance; past contract terminations, litigation, or debarments; Respondent's criminal history; or financial stability.

o) Respondent proposes the use of a subcontractor for which there is insufficient evidence (including evidence submitted by the Respondent and evidence obtained by the Agency from other sources) to satisfy the Agency that the subcontractor would constitute Responsible Respondent if the subcontractor were submitting the Proposal themselves, including but not limited to information of or concerning the subcontractor's past performance; past contract terminations, litigation, or debarments; the subcontractor's criminal history; or financial stability.

p) The Respondent alters the language in any certification/disclosure or authorization forms attached hereto and required to be submitted as part of the process, including but not limited to Attachment 2: Certification/Disclosure Letter and Attachment 3: Authorization to Release Information Letter.

q) The Respondent is a "scrutinized company" included on a "scrutinized company list" created by a public fund pursuant to Iowa Code section 12J.3.

r) Respondent marks its entire Proposal as confidential; makes excessive, overbroad, or unreasonable claims for confidential treatment; fails to supply the Agency with sufficient information to determine whether Respondent's request for confidential treatment is founded; or identifies information or materials as confidential that the RFP expressly identifies as not entitled to confidential treatment (including pricing information in the Cost Proposal), or as being otherwise subject to public disclosure; Respondent otherwise fails to comply with the confidentiality process set forth herein or in Form 22.

s) Any other reason set forth as subjecting a Proposal to disqualification in the RFP or any related attachments or addenda hereto.

2.19 Immaterial Variances

The Agency reserves the right to waive or permit cure of immaterial variances in the Proposal if, in the judgment of the Agency, it is in the State's best interest to do so. Immaterial variances include but are not limited to, minor failures, informalities, or irregularities, or any other variance between the Proposal and the requirements of this RFP which does not go to an essential requirement of the RFP or has no effect or merely an inconsequential effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of such variances would not prejudice other Respondents. For the avoidance of doubt, financial information, past litigation/regulatory matters, or criminal history information shall be considered immaterial variances. In the event a Respondent omits information from its Proposal that would otherwise constitute an immaterial variance, the Agency shall be deemed to have waived the immaterial variance notwithstanding the absence of affirmative evidence or documentation demonstrating the waiver. In the event the Agency waives or permits cure of immaterial variances, such waiver or cure will not modify the RFP specifications or excuse the Respondent from full compliance with RFP specifications or other Contract specifications if the Respondent is awarded the Contract. The determination of materiality is in the sole discretion of the Agency.

2.20 Proposal Clarification Process

The Agency reserves the right to contact a Respondent after the submission of Proposals for the purpose of clarifying a Proposal. This contact may include written questions, interviews, site visits, a review of past performance if the Respondent has provided goods and/or services to the State or any other political subdivision wherever located, or requests for corrective pages in the Respondent's Proposal. The Agency will not consider information received from or through Respondent if the information materially alters the content of the Proposal or the type of goods and/or services the Respondent is offering to the Agency. An individual authorized to legally bind the Respondent shall sign responses to any request for clarification. Responses shall be submitted to the Agency within the time specified in the Agency's request. Failure to comply with requests for additional information may result in rejection of the Proposal.

2.21 Respondent Presentations

Respondents may be required to make a presentation. The determination as to need for presentations, and the location, order, and schedule of the presentations is at the sole discretion of the Agency. The presentation may include slides, graphics and other media selected by the Respondent to illustrate the Respondent's Proposal. The presentation shall not materially change the information contained in the Proposal.

2.22 Reference Checks

The Agency reserves the right to contact any reference to assist in the evaluation of the Proposal, to verify information contained in the Proposal, to discuss the Respondent's qualifications and the qualifications of any subcontractor identified in the Proposal, or to otherwise determine whether Respondent is a Responsible Respondent.

2.23 Criminal History and Background Investigation

The Agency reserves the right to perform a criminal history check and background investigation(s) of the Respondent, its officers, directors, shareholders, partners and managerial and supervisory personnel who will be involved in the performance of the Contract in determining whether Respondent is a Responsible Respondent. By submitting its Proposal, Respondent hereby explicitly authorizes the Agency to conduct criminal history and/or other background investigation(s) of the Respondent, its officers, directors, shareholders, partners and managerial and supervisory personnel who will be involved in the performance of the Contract, and will fully cooperate with the Agency in obtaining any required waivers or releases required to complete any such criminal history check and background investigation(s).

2.24 Information from Other Sources

The Agency reserves the right to obtain and consider information from other sources concerning a Respondent, such as, by way of example only, the Respondent's capability and performance under other contracts, the qualifications of any subcontractor identified in the Proposal, the Respondent's financial stability, past or pending litigation or debarments, and other publicly available information. Such information may be used in evaluating Respondent's Proposal, verifying information contained in the Proposal, assessing Respondent's qualifications and the qualifications of any subcontractor identified in the Proposal, or to determine whether Respondent is a Responsible Respondent.

By way of example only, such other sources may include subject matter experts or information supplied from current contract managers. As another example, in evaluating each Respondent's Proposal, the evaluators may consider the evaluation committee members' own prior experiences with each bidder if relevant to what is being evaluated. Incumbent contractors often write about their prior work as an incumbent, and the Agency believes it would be inappropriate to evaluate an incumbent's proposal while ignoring the personal knowledge of the evaluators in this regard. In addition, certain aspects of an incumbent's scope of work will necessarily be different because of the incumbent's status. For instance, implementation and transition tasks will necessarily be different for an incumbent. Those state staff and/or contractors responsible for facilitating the scoring process will guard against the interjection of bias for or against any incumbent, but the Agency evaluators may consider their experiences with all respondents and any other extrinsic evidence if relevant to what is being evaluated. Further, considering incumbency is a neutral consideration and does not result in unfair bias or favoritism towards some Respondents over others because incumbency can be either a positive or a negative. Finally, as a final example, the

Agency may consider information elicited in or supplied in response to one section of the RFP in evaluating Respondent's Proposals in the context of other sections of the RFP.

2.25 Verification of Proposal Contents

The content of a Proposal submitted by a Respondent is subject to verification. If the Agency determines, in its sole discretion, that the content is in any way misleading or inaccurate, the Agency may reject the Proposal. If the Agency determines, in its sole discretion, that the content is in any way misleading or inaccurate after the original Notice of Intent to Award has been issued, the Agency may reject a Proposal, withdraw a prior Notice of Intent to Award, and/or issue a new Notice of Intent to Award to the next highest-scoring proposal. If the Agency determines, in its sole discretion, that the content is in any way misleading or inaccurate after a Contract has been executed between the Agency and Respondent, the Agency may declare the Respondent's Proposal or resulting Contract void, terminate any Contract, or pursue available remedies including but not limited to suspension, debarment, or damages for breach of contract.

2.26 Evaluation of Proposals Submitted

Proposals that are timely submitted and that are not rejected will be reviewed and evaluated in accordance with Section 5 (Evaluation and Selection) of the RFP. The Agency will not necessarily award a Contract resulting from this RFP to the Respondent offering the lowest cost. Instead, the Agency will award the Contract(s) to the Responsible Respondent(s) whose Responsive Proposal the Agency believes will provide the best value to the Agency and the State.

2.27 Contract Managers as Evaluators

Contract managers, or other personnel who may have personal experience with prospective Respondents, may possess extraordinarily valuable program expertise, such that they are valuable, if not indispensable, assets to an evaluation committee. For that reason, among others, contract managers and such other personnel may serve on the evaluation committee in evaluating Proposals submitted in response to this RFP. Contract managers and such other personnel serving as evaluators will guard against the interjection of bias for or against any incumbent, but, like all other evaluators, may consider their experiences with all Respondents and any other extrinsic evidence known to them if relevant to what is being evaluated.

2.28 Preferences

The State will make every effort to support Iowa-based businesses, Iowa products and services, American-made products, and American-based businesses when making a purchase. Tied bids will be decided in favor of the Iowa-based business or product and service, or the American-based business or product and service.

2.29 Award Notice and Acceptance Period

Notice of Intent to Award the Contract(s) will be sent to all Respondents submitting a timely Proposal and may be posted at the website shown on the RFP cover sheet. Negotiation and execution of the Contract(s) shall be completed no later than thirty (30) days from the date of the Notice of Intent to Award or such other time as designated by the Agency. If the successful Respondent fails to negotiate and deliver an executed Contract by that date, the Agency, in its sole discretion, may cancel the award and award the Contract to the remaining Respondent the Agency believes will provide the best value to the State.

2.30 Post Solicitation Debriefing

A debriefing is available to any Respondent who submitted a proposal in response to this RFP. Respondent shall submit a written request for a debriefing to the Issuing Officer via email or other delivery method. All Respondents will be accorded fair and equal treatment with respect to its opportunity for debriefing. The debriefing shall be scheduled by the Agency as soon as practicable after the receipt of debriefing request.

2.31 No Commitment to Contract/No Rights until Execution

The Agency reserves the right to reject any or all Proposals received in response to this RFP at any time prior to the execution of the Contract. Issuance of this RFP in no way constitutes a commitment by the Agency to award a contract. No Respondent shall acquire any legal or equitable rights regarding the Contract unless and until the Contract has been fully executed by the successful Respondent and the Agency. *See* Section 6 (Contract Terms and Conditions & Administration) for additional information related to the contracting process and the terms and conditions governing any resulting Contract.

2.32 Use of Subcontractors

The Agency acknowledges that the successful Respondent may contract with third parties for the performance of any of the Contractor's obligations. The Agency reserves the right to provide prior approval for any subcontractor used to perform services under any contract that may result from this RFP.

2.33 Restrictions on Gifts and Activities

Iowa Code Chapter 68B restricts gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with the State government. Respondents are responsible to determine the applicability of this Chapter 68B to their activities and to comply with its requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

2.34 Respondent Continuing Disclosure Requirement

To the extent that Respondents are required to report incidents when responding to this RFP related to damages, penalties, disincentives, administrative or regulatory proceedings, or felony convictions, these matters are subject to continuing disclosure to the Agency. Incidents occurring after submission of a Proposal, and with respect to the successful bidder after the execution of a contract, shall be disclosed in a timely manner in a written statement to the Agency. For purposes of this subsection, timely means within thirty (30) days from the date of the incident, regardless of any appeal rights. If a Respondent fails to disclose an incident, regardless of whether the incident occurred before or after submission of a Proposal, and the Agency subsequently learns of the incident and determines the omission is material, the Agency, in its sole discretion, may cancel the award and award the Contract to the remaining Respondent the Agency believes will provide the best value to the State. If an omission is brought to the attention of an Agency as part of the appeal process set forth below, and the omission is determined to be potentially material, the appropriate remedy is for the applicable tribunal to remand the matter back to the Agency for it to determine whether the omission was, in the Agency's sole discretion, material, and whether to cancel the award and award the Contract to the remaining Respondent the Agency believes will provide the best value to the State; reissue the RFP; or proceed on another alternative path.

2.35 Appeals

2.35.1 Generally. A Respondent whose Proposal has been timely filed and who is aggrieved by the Notice of Intent to Award of the Agency may appeal the decision by filing a written Notice of Intent to Appeal (in accordance with Iowa Administrative Code rule 129—11.3) to:

The State Library of Iowa
Attn: State Librarian
1112 East Grand Avenue
Des Moines, IA 50319

with a copy also sent to the Issuing Officer. The Notice of Intent to Appeal must be filed within five (5) days of the date of the Notice of Intent to Award issued by the Agency, exclusive of Saturdays, Sundays, and legal State holidays. Following the Agency's receipt of the Notice of Intent to Appeal, the Agency will transmit to the Appellant the materials required by and in accordance with Iowa Administrative Code rule 129—11.3(2). An Appellant shall not be entitled to additional discovery, materials, or information in furtherance of the Appeal unless and until the proceedings advance to a second tier review pursuant to and in accordance with Iowa Administrative Code chapter 129—11.

2.35.2 Appeal Bond/Security. As contemplated and permitted by Iowa Administrative Code rule 129—10.12(2)(c), an Appellant appealing a Notice of Intent to Award shall, accompanying the Notice of Intent to Appeal, supply an appeal bond equal to 5 percent of the total contract value. If the contract value is not readily discernible, the Agency will supply the Respondent with an estimate upon request, which estimate shall be determinative. This appeal bond shall be separate, distinct, and in addition to any bond required by Iowa Administrative Code rule 129—11.10(1)(a) in connection with a petition for stay of the Award, if sought, or an appeal security required in connection with any request for second-tier review in accordance with Iowa Administrative Code rule 129—11.7(2), if pursued. In addition to the foregoing appeal bond, should an appeal proceed to a second-tier review, the Respondent initiating such appeal shall supply the Agency with an additional appeal security equal to 25 percent of total contract value. Such additional appeal security shall accompany the request for second tier review. Appellant forfeits an appeal bond or security if, as determined by the Agency, following resolution of the appeal, the appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the Agency or another vendor. Failure to supply the Agency with an appeal bond or security required by this Section 2.40.2 (Appeal Bond/Security) shall result in dismissal of the appeal. An appeal bond or security may be by certified check, cashier's check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the Agency. These requirements will not be waived by the Agency

2.36 Choice of Law and Forum

All issues in any way related to this RFP and any resulting Contract shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this RFP or any resulting Contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the

Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. By submitting its Proposal, Respondent irrevocably: (1) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this RFP or any resulting Contract shall be brought and maintained exclusively in the aforesaid courts; (2) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (3) waives any objection to such jurisdiction based on *forum non conveniens* or otherwise. This provision shall not be construed as waiving or altering any requirement that Respondent utilize or exhaust any administrative remedies or procedures as a precondition to judicial review. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Agency or the State of Iowa, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise.

2.37 Order of Precedence

If there is a conflict between a specific provision in this solicitation or those in any resulting contract documents the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) the Proposal.

SECTION 3 FORM AND CONTENT OF PROPOSALS

3.1 Instructions

These instructions prescribe the format and content of the Proposal. They are designed to facilitate a uniform review process. Failure to adhere to the Proposal format may result in the rejection of the Proposal.

3.1.1 The Proposal shall be sent in digital format via email to the Issuing Officer. Proposals must be formatted for printing on 8.5" x 11" paper. The Proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal. The Technical Proposal and the Cost Proposal shall be labeled as such and emailed separately to the Issuing Officer. If multiple emails are required, each email shall be numbered in the following fashion: 1 of 4, 2 of 4, etc. The subject line of the email shall read:

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The Issuing Officer shall provide confirmation of receipt of all parts of a proposal, upon request. The Agency shall not be responsible for failure to receive an email or for providing confirmation of receipt of an electronic submission if such confirmation is not requested.

3.1.2 One digital copy of the Technical Proposal shall be timely submitted to the Issuing Officer in an email. One digital copy of the Cost Proposal shall be submitted in a separate email.

3.1.3 If the Respondent designates any information in its Technical Proposal as confidential pursuant to Section 2.13 (Form 22—Request for Confidentiality), the Respondent must submit one (1) copy of the Proposal from which confidential information has been excised as provided in Section 2 and which is marked "Public Copy." ***NOTE: Respondents MAY NOT seek confidential treatment of their Cost Proposal, in whole or in part.***

3.1.4 Proposals shall not contain promotional or display materials.

3.1.5 Attachments shall be identified in the body of the main Proposal.

3.1.6 If a Respondent proposes more than one solution to the RFP specifications, each must be labeled and submitted in a separate Proposal and each will be evaluated separately.

3.2 Proposal Contents

The following documents and responses shall be included in the Proposal in the order given below.

3.2.1 Transmittal Letter (Required)

An individual authorized to legally bind the Respondent shall sign the transmittal letter. The letter shall include the Respondent's mailing address, email address, and telephone number.

3.2.2 Title Page

Include company name, address, phone number, email address, and authorized representative along with the Proposal Number.

3.2.3 Table of Contents

The Respondent shall include a table of contents of its Proposal.

3.2.4 Technical Proposal

The Respondent shall submit a Technical Proposal, which shall include all information requested/required by Section 4 (Technical Proposal Contents) in accordance with the formatting requirements set forth above.

3.2.5 Cost Proposal: **Attachment 1**

The Respondent shall submit a Cost Proposal, which shall include all information requested/required in the Cost Proposal Addenda hereto (Attachment 1: Cost Proposal). **The Respondent shall provide its Cost Proposal in a separately sealed envelope for the proposed goods or services.**

3.2.6 Certification/Disclosure Letter: Attachment 2

The Respondent shall complete, sign, and submit with its Proposal the document included as Attachment 2: Certification/Disclosure Letter in which the Respondent shall make the certifications/disclosures related to Respondent's past contract terminations, litigation, or debarments; Respondent's criminal history; and Respondent's financial stability.

3.2.7 Authorization to Release Information Letter: Attachment 3

The Respondent shall sign and submit with the Proposal the document included as Attachment 3 (Authorization to Release Information Letter) in which the Respondent authorizes the release of information to the Agency by third parties.

3.2.8 Form 22—Request for Confidentiality

The Respondent shall complete and submit with the Proposal the document included as Attachment 4 (Form 22—Request for Confidentiality) in which the Respondent shall identify whether and to what extent it is requesting confidential treatment for aspects of its Proposal and provide justification for any such request. **FORM 22 MUST BE COMPLETED AND INCLUDED WITH RESPONDENT'S PROPOSAL REGARDLESS OF WHETHER THE PROPOSAL DOES OR DOES NOT CONTAIN INFORMATION FOR WHICH CONFIDENTIAL TREATMENT WILL BE REQUESTED.**

3.2.9 Exceptions to Terms and Conditions: Attachment 5

If the Agency is not utilizing the State's General Terms and Conditions for Service Contracts or Goods Contracts, as linked to on the RFP cover sheet, but instead is utilizing a more specific or targeted set of terms and conditions, such more specific or targeted terms and conditions will be attached to this RFP as Attachment 5. Irrespective of which approach the Agency has deployed as it relates to the Terms and Conditions applicable to any subsequent Contract executed between the Agency and a successful Respondent, if the Respondent takes exception to a provision of any such Terms and Conditions, it must identify any such provision by page and section number, state the reason for the exception, and set forth in its Proposal the specific language it proposes to include in place of the provision. **Such exceptions must be submitted as Attachment 5 to Respondent's Proposal.** *See* Section 6 (Contract Terms and Conditions & Administration) of this RFP for more information regarding the contracting process.

3.2.10 Check List of Submittals: Attachment 6

The Respondent shall complete and submit with the Proposal the document included as Attachment 6 (Check List of Submittals) in which the Respondent demonstrates to the Agency that it has completed all the required elements for this RFP.

SECTION 4 Technical Proposal Contents

This Section lists the specifications/requirements related to this RFP. By submitting a proposal, the Vendor agrees to meet all stated specifications/requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this RFP. If a Respondent is unclear about a specification or requirement or believes a change to a specification or requirement would allow for the State to receive better proposals, the Respondent is urged and cautioned to submit these items in the form of a question during the question and answer period in accordance with Section 2.8 (Questions, Requests for Clarification, and Suggested Changes). Failure to raise a question, request for clarification, or suggestion through that process shall constitute a waiver of any objection or argument as part of any subsequent vendor appeal. Items in this Section 4 will be considered in the evaluation and scoring of the Respondent's Technical Proposal:

4.1 Executive Summary

The Respondent shall prepare an executive summary and overview of the goods and/or services it is offering, including all of the following information:

4.1.1 Statements that demonstrate that the Respondent has read, understands and agrees with the terms and conditions of the RFP, including all addenda and attachments hereto.

4.1.2 Confirmation that Respondent has read the Scope of Work set forth above, and that Respondent understands the scope and nature of the services/products being solicited.

4.1.3 An overview of the goods and/or services Respondent is offering in response to this RFP.

4.1.4 An overview of the Respondent's plans for complying with the specifications and requirements of this RFP.

4.1.5 Any other summary information that demonstrates Respondent's added value or differentiation from competitors.

4.2 Respondent Background Information

The Respondent shall provide the following general background information:

4.2.1 Name, address, telephone number, fax number and e-mail address of the Respondent including all d/b/a's or assumed names or other operating names of the Respondent and any local addresses and phone numbers.

4.2.2 Form of business entity, *e.g.*, corporation, partnership, proprietorship, limited liability company.

4.2.3 State of incorporation, state of formation, or state of organization.

4.2.4 The location(s) including address and telephone numbers of the offices and other facilities that relate to the Respondent's performance under the terms of this RFP.

4.2.5 Number of employees.

4.2.6 Type of business.

4.2.7 Name, address and telephone number of the Respondent's representative to contact regarding all contractual and technical matters concerning the Proposal.

4.2.8 Name, address and telephone number of the Respondent's representative to contact regarding scheduling and other arrangements.

4.2.9 Name, contact information and qualifications of any subcontractors who will be involved with this project the Respondent proposes to use and the nature of the goods and/or services the subcontractor would perform.

4.2.10 Respondent's accounting firm.

4.2.11 Does your home state have a preference for instate vendors? Yes or No. If yes, please include the details of the preference.

4.2.12 The successful Respondent will be required to register to do business in Iowa before payments can be made. For vendor registration documents, go to: https://das.iowa.gov/procurement/vendors/how-do-business.

4.3 Mandatory Specifications

The Respondent shall answer "yes" or "no" as to whether it will comply with each specification in this Section. Where the context requires more than a "yes" or "no" answer, or the specific specification so indicates, Respondent shall explain how it will comply with the specification. In that case, merely repeating a mandatory specification may be considered non-responsive and result in the rejection of the Proposal.

Proposals must identify any deviations from the specifications of the RFP or specifications the Respondent cannot satisfy. If the Respondent deviates from or cannot satisfy the specification(s) of this section, the Agency may reject the Proposal without further consideration.

The Contractor must:

General

4.3.1 Provide the personnel, equipment, tools, test equipment, and expertise to meet the specifications in the RFP.

4.3.2 Provide a solution that gives the Consortium the ability to set policy on things like number of checkouts, holds, and checkout length.

4.3.3 Provide a process for obtaining MARC records for purchased materials within the solution.

4.3.4 Guarantee a minimum of 99.9% uptime with no downtime for maintenance or upgrades for the solution.

4.3.5 Provide training with the proposed solution, including a dedicated trainer who can provide online classroom training sessions using web conferencing (e.g. Zoom, Google Meet, and so on).

4.3.6 Comply with, and enable and facilitate the Agency's and Customer Agencies' compliance with, applicable accessibility laws, rules, regulations, policies, and standards, including but not limited to:

- Title II of the Americans with Disabilities Act and corresponding implementing Regulations;
- Sections 504 and 508 of the Rehabilitation Act of 1973, as amended, and corresponding implementing regulations;
- The State of Iowa's Website Accessibility Standard, available at https://ocio.iowa.gov/website-accessibility-standard; and
- Web Content Accessibility Guidelines (WCAG) 2.0 levels A and AA.

4.3.7 Provide a solution that is compliant with all applicable Americans with Disabilities standards for product accessibility.

System Administration

4.3.8 Provide a User administration system for the solution that includes the following capabilities:

- Authentication with username and password.
- The ability for the Agency to administer all User accounts.
- Verification of User email addresses at the creation of a new User account.
- A User self-service password reset option.

4.3.9 Provide a solution with the ability to set up User permissions based on office and User role.

4.3.10 Provide administrative Users the ability to create/control accounts in the reporting system.

4.3.11 Allow administration of the system by the Consortium online.

4.3.12 Provide a solution that allows state-level administrative Users to easily remove and/or reset accounts.

Reporting

4.3.13 Provide a solution that provides downloads in .csv/ MS Excel format, at a minimum.

4.3.14 Provide a User-friendly, web-based reporting interface.

4.3.15 Provide automated reports for system use that can be set for all levels of User access.

4.3.16 Provide reports for the Agency that show full collection and usage reports across the whole consortium.

4.3.17 Provide the Agency with administrative access to individual libraries' reports.

4.3.18 Provide all consortium members with access to data and a robust reporting package for their own library.

4.3.19 Provide Consortium-wide aggregate reports for all authorized Users in the Agency and the Consortium.

Solution

4.3.20 Provide a method within the solution to add new material to the Consortium's collection and remove materials when desired.

4.3.21 Provide a flexible and intuitive User interface (e.g. layout, typography, navigation, color, etc.), including functional links and buttons that allow Users to intuitively navigate the solution.

4.3.22 Provide a solution whose UI and navigation processes are consistent throughout the solution.

4.3.23 Provide a solution that performs and functions to full capacity and accessibility on mobile devices (e.g. tablets, smartphones).

4.3.24 Provide a solution that supports all current web browser versions and window sizes.

4.3.25 Provide a system that allows patrons to log in by selecting their own library and using their library card number

4.3.26 Provide a solution that accepts authentication from multiple library ILS systems, EZproxy, LDAP and other means.

4.3.27 Provide a system that offers an alternative authentication service to libraries that can't use their integrated library system (ILS).

4.3.28 Provide a solution that facilitates integration with common integrated library systems (ILS) for patron discovery.

4.4 Scored Technical Specifications

4.4.1 Describe the proposed solution, including product features/capabilities, alignment with the Agency's goals, system design, user experience, and other information supporting a determination that the proposed solution will meet the needs of the Agency for a e-Library Resources similar in nature to the background provided in Section 1.3 and the Mandatory Specifications in Section 4.3.

4.4.2 Describe the ease of use and ease of navigation designed into the proposed solution.

4.4.3 Describe your customization and extensibility capabilities.

4.4.4 Describe the plan for hosting the proposed solution. Include your security measures to protect User information.

4.4.5 Describe your plan for deployment of the proposed solution. Include an estimated timeline for the deployment.

4.4.6 Describe recommended implementation strategy including on-site coordination and support services, best practice consulting options and professional services.

4.4.7 Provide an implementation timeline.

4.4.8 Describe how local system administrator permissions work including but not limited to Add/Delete/Modify Users, password access, etc.

4.4.9 Describe in a short paragraph the reporting available through the admin interface of the product including formats of reporting data available for export such as tab delimited and/or comma delimited file types.

4.4.10 Describe the methods available in the proposed solution that allow Consortium members to authenticate patrons' library membership prior to checking out electronic materials.

4.4.11 Describe the proposed solution's features for directing Users to find age appropriate content for children and teens.

4.4.12 Describe the process for obtaining MARC records for materials purchased through the proposed solution. If there is a separate cost for obtaining MARC records, Respondent shall indicate those costs in the Cost Proposal.

4.4.13 Describe the proposed solution's search capabilities for both the catalog & user interface.

4.4.14 Describe your approach to digital rights management from a library User's point of view.

4.4.15 Describe your available catalog, including:

- All formats available, e.g. ebook, audiobook, magazine, video
- Accessibility options, e.g. downloadable for offline use, streaming
- The age groups your resources serve
- Search features, e.g. sorting features, availability of reviews, publishers available
- Any exclusions

4.4.16 Describe the process to import the current collection, in all formats, into the proposed solution. In the event that is not possible, describe an opening day collection.

4.4.17 Describe how Consortium members can purchase specific titles for use by their own patrons. Also, explain how that library can share those titles with other Users if it chooses.

4.4.18 Describe materials lending options for Users (e.g. loan periods, number of checkouts) within the proposed solution.

4.4.19 Describe any other value-added services you offer in addition to the proposed solution.

4.4.20 Describe Respondent's experience and capacity to conduct statewide and local training and ongoing support of the project.

4.4.21 Describe the training program offered with the proposed solution for Users at all levels (i.e. Agency administration, library staff, library patrons). Include all delivery methods (live, online/self-guided, manuals, etc), online resources, and vendor support that is offered.

4.4.22 Describe the ongoing support to be provided for the proposed solution for the duration of the Contract. Include the technical support process for Consortium member libraries and State Library administrators.

4.4.23 Describe Respondent's plan for post-implementation ongoing maintenance and upgrades. Include a description of how you will respond to system malfunctions, security breaches, and diagnose and solve problems with the network, hardware, or software. Responses should include the plan to be provided to the State, which would include identifying the team responsible to resolve problems, a description of their actions, and the approach to that resolution.

4.4.24 Describe the documentation provided with the product along with applicable costs for any additional documentation.

4.4.25 Describe your approach to promoting use of the proposed solution in marketing and publicity materials and support provided.

4.4.26 Describe how the proposed solution allows for customizable branding for both the Agency and the member libraries making up the Consortium.

4.4.27 Describe the billing process and how it works within a consortium arrangement. Include details regarding Respondent's ability to bill member libraries for materials as described in Section 1.3 of this RFP.

4.5 Firm Offer. Respondent shall guarantee that the goods or services offered in the Proposal are currently available and that all Proposal terms, including price, will remain firm for the number days indicated on the RFP cover sheet following the deadline for submitting Proposals.

SECTION 5 EVALUATION AND SELECTION

5.1 Introduction

This section describes the evaluation process that will be used to determine which Proposal(s) provides the greatest benefit to the State. The Agency will not necessarily award the Contract to the Respondent offering the lowest cost to the Agency. Instead, the Agency will award to the Respondent whose Responsive Proposal the Agency believes will provide the best value to the State. Proposals will generally be evaluated according to completeness, content, experience, ability and responsibility of the Respondent and its staff, and cost.

5.2 Evaluation Committee

The Agency will conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. The Agency will use an evaluation committee to review and evaluate the Technical Proposals. The evaluation committee will recommend an award based on the results of their evaluation to the Agency or to such other person or entity who must approve the recommendation.

5.3 Technical Proposal Evaluation and Scoring

5.3.1 All Technical Proposals will first be reviewed to determine if they comply with the requirements set forth in the RFP, and to determine whether Respondent is a Responsible Respondent. By way of example only, the Issuing Officer will review Respondent's Technical Proposal for responsiveness, compliance with the requirements of the RFP, and responsibility, including review of:

5.3.1.1 Respondent's Technical Proposal to ensure it satisfies the Form and Content requirements of Section 3 (Form and Content of Proposals).

5.3.1.2 Respondent's Technical proposal to ensure Respondent has agreed that it will comply with or otherwise satisfy any Mandatory Specifications set forth in Section 4 (Technical Proposal Contents).

5.3.1.3 Respondent's Technical Proposal to ensure Respondent has completed and submitted all necessary attachments in accordance with all applicable instructions and requirements

5.3.1.4 Respondent's certifications/disclosures, reference checks, or other background investigation materials, including but not limited to Respondent's Criminal History, litigation or debarment history, or financial condition, to determine whether Respondent is a Responsible Respondent. The Issuing Officer may consult with subject matter experts, such as accountants in the case of reviewing Respondent's financial condition, in determining whether Respondent is a Responsible Respondent.

5.3.1.5 Respondent's Technical Proposal and all other attachments (other than the Cost Proposal, which shall only be opened and reviewed as set forth below) to determine whether the Proposal should otherwise be rejected pursuant to Section 2.18 (Rejection of Proposals) or is a non-Responsive Proposal.

5.3.2 The Technical Proposals will then be evaluated and scored by the evaluation committee based on the evaluation categories identified in the Scored-Technical Specifications

Section of Section 4 (Technical Proposal Contents), and in accordance with the relative weights accorded each evaluation category as set forth in an addendum posted prior to the RFP closing.

5.3.3 Demonstrations

Respondents will be required to provide a demonstration version of their proposed solutions for the evaluation committee's review and use. The demo test environment should be configured to mirror a live environment. Each Respondent must also provide a brief tutorial via virtual meeting to assist the committee with the use of its solution. The committee's impressions from the hands-on use of each Respondent's solution will be incorporated as part of the final Technical Proposal score assigned.

5.3.4 Minimum Technical Proposal Score

Technical Proposals must receive at least 60% of the available points in order to be eligible to be awarded the contract. Proposers who do not receive at least 60% of the points available for the Technical Proposal will not be eligible for further consideration in the RFP and will not have their Cost Proposals reviewed.

5.4 Cost Proposal Scoring

The Cost Proposals will remain sealed during the evaluation of the Technical Proposals and any demonstrations. If the Agency elects to institute a minimum technical score other than that stated in Section 5.3.4, the minimum technical score will set forth in an addendum posted prior to the RFP closing. When a Technical Proposal does not meet the minimum technical score, the associated Cost Proposal will remain unopened. After the Technical Proposals are evaluated and scored, the Cost Proposals will be opened and scored in accordance with any scoring criteria set forth in Cost Proposal Addendum attached hereto.

If no Cost Proposal Addendum is attached hereto, or if no more specific scoring criteria is set forth in a Cost Proposal Addendum attached hereto, Cost Proposals may be evaluated, and points awarded as follows:

5.4.1 The Cost Proposals will be ranked from least to most expensive.

5.4.2 The least expensive Cost Proposal shall receive the maximum number of points available.

5.4.3 To determine the number of points to be awarded to all other Cost Proposals, the least expensive Cost Proposal will be used in all cases as the numerator. Each of the other Cost Proposals will be used as the denominator per the example below.

5.4.4 The percentage will then be multiplied by the maximum number of available points and the resulting number will be the cost points awarded to other compliant Respondents. Percentages and points will be rounded to the nearest whole value.

Example:

Respondent A quotes $35,000, Respondent B quotes $45,000, and Respondent C quotes $65,000.

Respondent A: $\frac{\$35,000}{\$35,000}$ = receives 100% of available points on cost.

Respondent B: $\frac{\$35,000}{\$45,000}$ = receives 78% of available points on cost.

Respondent C: **$35,000 = receives 54% of available points on cost.**
$65,000

If Cost Proposals are evaluated pursuant to the above-described methodology, or if any scoring criteria set forth in the Cost Proposal Addendum attached hereto does not require the exercise of any discretion to calculate the Cost Scores, the evaluation committee need not review or otherwise ratify any final Cost Scores or Total Scores, and the Cost Scores may be calculated and incorporated into the Total Score by the Issuing Officer. By virtue of developing cost criteria that require the exercise of no discretion, the evaluation committee has delegated any obligation it has to review and approve final Cost Scores to the issuing officer. In the event scoring irregularities arise, the Issuing Officer may seek guidance from the evaluation committee on how to resolve such irregularities. The decision of the evaluation committee on how to resolve any such irregularities shall be final.

5.5 Total Score

The compliant Respondent's Technical Proposal points will be added to its Cost Proposal points to obtain the total points awarded for the Proposal. If Cost Proposals were evaluated pursuant to the default methodology set forth in Section 5.4 (Cost Proposal Scoring), or if any scoring criteria set forth in Cost Proposal Addendum attached hereto does not require the exercise of any discretion to calculate the Cost Scores, the evaluation committee need not review or otherwise ratify any final Total Scores prior to the issuance of any Notice of Intent to Award.

5.6 Tied Score and Preferences

5.6.1 An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the Respondents who are tied in price. Otherwise the drawing will be made in front of at least three non-interested parties. All drawings shall be documented.

5.6.2 Notwithstanding the foregoing, if a tied score involves an Iowa-based Respondent or products produced within the State of Iowa and a Respondent based or products produced outside the State of Iowa, the Iowa Respondent will receive preference. If a tied score involves one or more Iowa Respondents and one or more Respondents outside the state of Iowa, a drawing will be held among the Iowa Respondents only.

5.6.3 In the event of a tied score between Iowa Respondents, the Agency shall contact the Iowa Employer Support of the Guard and Reserve (ESGR) committee for confirmation and verification as to whether the Respondents have complied with ESGR standards. Preference, in the case of a tied score, shall be given to Iowa Respondents complying with ESGR standards.

5.6.4 Second preference in tied scores will be given to Respondents based in the United States or products produced in the United States over Respondents based or products produced outside the United States. Preferences required by applicable statute or rule shall also be applied, where appropriate.

SECTION 6 CONTRACT TERMS, CONDITIONS, AND ADMINISTRATION

6.1 Contract Terms and Conditions

The Contract that the Agency expects to award as a result of this RFP shall comprise the specifications, terms and conditions of the RFP, written clarifications or changes made by the Agency to the RFP through an amendment to the RFP in accordance with the provisions of the RFP, the Terms and Conditions, the offer of the successful Respondent contained in its Proposal, and any other terms deemed necessary by the Agency. No objection or amendment by a Respondent to the provisions or terms and conditions of the RFP or the Terms and Conditions shall be incorporated into the Contract unless the Agency has explicitly accepted the Respondent's objection or amendment in writing.

The Contract terms and conditions in this Section 6, the General Terms and Conditions to the extent referenced and linked to on the RFP cover page, and/or any Terms and Conditions attached to and accompanying this RFP as an attachment hereto, will be incorporated into the Contract. The Terms and Conditions may be supplemented at the time of contract execution and are provided to enable Respondents to better evaluate the costs associated with the RFP specifications and the Contract. All costs associated with complying with such Terms and Conditions should be included in any pricing quoted by the Respondent.

By submitting a Proposal, Respondent acknowledges its acceptance of the terms and conditions of the RFP and the Terms and Conditions without change except as otherwise expressly stated in its Proposal. If the Respondent takes exception to a provision, it must identify it by page and section number, state the reason for the exception, and set forth in its Proposal the specific RFP or Terms and Conditions language it proposes to include in place of the provision. If Respondent's exceptions or proposed responses materially alter the RFP, or if the Respondent submits its own terms and conditions or otherwise fails to follow the process described herein, the Agency may reject the Proposal, in its sole discretion.

The Agency will evaluate all Proposals without regard to any proposed modifications to any terms and conditions of the RFP or Terms and Conditions by Contractor. Once a Proposal has been identified as the one for which an Award recommendation has been made, but prior to notifying Respondents of the decision, the Agency, in its sole discretion, may consider any proposed modifications to the terms and conditions of the RFP or Terms and Conditions identified in that Proposal. The Agency reserves the right to either award a Contract(s) without further negotiation with the successful Respondent or to negotiate Contract terms with the successful Respondent if the best interests of the State would be served. As such, if any proposed modifications are not determined to be in the best interests of the State, or appear to pose a substantial impediment to reaching agreement, the Agency may, in its sole discretion:

6.1.1 Issue a Notice of Intent to Award in favor of the successful Respondent, but decline to agree to or further negotiate any proposed modifications to terms and conditions identified by the Respondent in its Proposal;

6.1.2 Issue a Notice of Intent to Award in favor of the successful Respondent, and identify in the Notice proposed modifications to terms and conditions identified by the Respondent in its Proposal with which the agency will or will not agree or further negotiate;

6.1.3 Enter open-ended negotiations with the successful Respondent; provided, that any such negotiations shall be limited to the proposed modifications to terms and conditions identified by Respondent in its Proposal;

6.1.4 Change the Agency's recommendation for Award and issue a Notice of Intent to Award to a Respondent whose proposal does not pose as great of a challenge to the Agency.

Any ambiguity, vagueness, inconsistency or conflict, either internal to such modification(s) or arising when read in conjunction with other portions of the Contract, shall be construed strictly in favor of the State. Only those proposed modifications identified in the Notice of Intent to Award issued by the Agency as terms and conditions with which the agency will or will not agree or further negotiate shall be part of the Contract, and the State may ignore all proposed modifications, accept one or more and ignore others, accept all or, through negotiations after an award, agree to compromise language concerning one or more proposed modifications to be incorporated into a final Contract between the parties. By executing and submitting its Proposal in response to this RFP, Respondent understands and agrees that the State may exercise its discretion not to consider any or all proposed modifications Respondent may request and may accept Respondent's proposal under the terms and conditions of this RFP and the Terms and Conditions.

6.2 Contractual Terms and Conditions – No Material Changes/Non-Negotiable

Notwithstanding anything in this RFP to the contrary, Respondent may not take exception to or propose including language in any resulting contract that conflicts with or is otherwise inconsistent with the following:

6.2.1 Indemnification

Without specific authority to do so, the State, or agencies, cannot enter into agreements indemnifying Respondents, or any other entity, against third-party claims. A clause that intends to seek indemnification from the State, whether or not the clause contains the words "indemnity" or "indemnify," are not clauses to which the State may agree. The State will not agree to any clause that includes the language "to the extent permitted by law" because, as explained, the State cannot indemnify Respondents to any extent.

6.2.2 Limitation of Liability

Iowa Code section 8A.311(22) and 11 Iowa Admin. Code Chapter 120 establishes the rules to allow for the State to agree to a contractual limitation of vendor liability clause in limited circumstances. Any request by Respondent for the State to limit damages not in accordance with Iowa law or administrative rules is a request with which the State cannot agree.

6.2.3 Jurisdiction and Venue

Iowa Code chapter 13 establishes that the Iowa Attorney General is the State's attorney for all purposes, including management of litigation and claims against the state. The State may not preempt the Attorney General's authority by agreeing in advance to control the way litigation may be managed in the event of a dispute. Likewise, the State cannot agree to the jurisdiction or laws of another state or its courts, cannot agree to a venue in another state, and cannot agree to participate in any form of alternative dispute resolution.

6.2.4 Confidentiality

All Iowa state agencies are subject to Iowa public records laws. The State cannot agree to contractual terms that attempt to prevent it from disclosing or disseminating records that constitute public records under Iowa Code chapter 22.

6.2.5

6.2.6 Unliquidated Expenses (*i.e.*, Attorney Fees, Add-ons, or Cost Increases)

The State may not agree to clauses which may obligate it to pay for claims that might exceed its current funding appropriation. The State may only obligate those funds that have been appropriated to it by the Iowa Legislative Assembly and may only obligate those funds for the purposes for which the funds were appropriated.

6.3 Special Terms and Conditions

6.3.1 Term Length

The Contract shall have an initial term of five (5) years, beginning on the date of contract execution (the **"Effective Date"**). At the end of the Contract's initial term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to a total of five (5) additional one-year terms. The State will give the Vendor written notice of its intent whether to exercise each option no later than 180 days before the end of the Contract's then-current term.

6.3.2 Payment Terms

6.3.2.1 Payment Methods

The State of Iowa, in its sole discretion, will determine the method of payment for goods and/or services as part of the Contract. The State Pcard and EAP are preferred payment methods, but payments may be made by any of the following methods: Pcard/EAP, EFT/ACH, or State Warrant. Respondents shall indicate in their Cost Proposals all of the payment methods they will accept. **This information will not be scored as part of the Cost Proposal or evaluated as part the Technical Proposal.**

6.3.2.2 Credit card or ePayables

The State of Iowa's Purchasing Cards (Pcards) and ePayable solution (EAP) are commercial payment methods utilizing the VISA credit card network. The State of Iowa will not accept price changes or pay additional fees if Respondent uses the Pcard or EAP payment methods. Pcard-accepting Respondents must abide by the State of Iowa's Terms of Pcard Acceptance, as provided in Section 7.7 of the RFP. Respondents must provide a statement regarding their ability to meet the requirements in this subsection, as well as identifying their transaction reporting capabilities (Level I, II, or III).

6.3.2.3 Terms and Conditions for State of Iowa Purchasing Cards

The State of Iowa shall pay Contractor's invoices using its Purchasing Card Program (Pcard) whenever possible. The Pcard is a VISA credit card issued by U.S. Bank to allow authorized employees to make purchases on behalf of the State. It is a faster, more convenient alternative to traditional invoicing and remittance processing, allowing US Bank to pay the Contractor directly, generally within 48 hours of the transaction. Contractor shall comply with security measures for Pcard payments including:

6.3.2.3.1 Contractor shall comply with <u>Payment Card Industry Data Security Standard (PCI DSS)</u> to assure confidential card information is not compromised;

6.3.2.3.2 Contractor shall adhere to Fair and Accurate Credit Transactions Act requirements that limit the amount of consumer and account information shared for greater security protection;

6.3.2.3.3 Contractor shall not write down card numbers or store card information. When accepting orders by phone, Contractor shall process the transaction during the call and send itemized receipts (excluding card numbers) to the cardholder by fax, email, or mail (with delivery);

6.3.2.3.4 Contractor shall process payment for items when an order is placed only for items currently in stock and available for shipment, and only for services already rendered;

6.3.2.3.5 Contractor shall confirm that the name of purchaser matches the name on the card;

6.3.2.3.6 Contractor shall ensure Internet orders are processed via secure websites, featuring Verisign, TRUSTe, BBBOnline, or "https" in the web address;

6.3.2.3.7 Contractor shall shred any documentation with credit card numbers.

6.3.2.4 State Warrant

The State of Iowa's warrant drawn on the Treasurer of State is used to pay claims against the departments of the State of Iowa. The warrant is issued upon receipt of proper documentation from the issuing department.

6.3.2.5 Payment Terms

Per Iowa Code 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a Contractor.

6.3.2.6 Respondent Discounts

Respondents shall state in their Cost Proposals whether they offer any payment discounts.

6.3.2.7 Prompt Payment Discount

The State can agree to pay in less than sixty (60) days if an incentive for earlier payment is offered.

6.3.2.8 Invoices

Any invoices submitted must comply with applicable rules concerning payment of claims, including but not limited to those set forth at Iowa Administrative Code chapter 11—41.

6.3.3 Insurance

The Contract will require the successful Respondent to maintain insurance coverage(s) in accordance with the insurance provisions of the General Terms and Conditions and of the type and in the minimum amounts set forth below, unless otherwise required by the Agency.

Type	Limit	Amount
General Liability (including contractual liability) written on a per occurrence basis	General Aggregate **Products –** Comp/Op Aggregate Personal injury Each Occurrence	$2 million $1 Million $1 Million $1 Million
Excess Liability, Umbrella Form	Each Occurrence Aggregate	$1 Million $1 Million
Errors and Omissions Insurance	Each Occurrence	$1 Million
Property Damage	Each Occurrence Aggregate	$1 Million $1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law

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

6.3.4 Performance Security

The Contract may require the Respondent to provide security for performance [e.g. performance bond, escrow, letter of credit, liquidated damages]. If so, Agency shall retain ten percent (10%) of each payment due under the Contract. Agency shall pay the retained amount only after all Deliverables have been completed by Contractor and accepted by the Agency.

6.4 Order of Precedence

If there is a conflict or inconsistency between any documents comprising the Terms and Conditions, such conflict or inconsistency shall be resolved according to the following priority, ranked in descending order: (1) any terms and conditions specifically set forth in this Section 6 (Contract Terms and Conditions & Administration) under a subsection with a heading entitled Special Terms & Conditions; (2) the General Terms and Conditions for Services Contracts or Goods Contracts to the extent referenced and linked to on the RFP cover page the Contract; (3) if neither the General Terms and Conditions for Service Contracts or Goods Contracts are linked to on the RFP cover page, any terms and conditions attached to and accompanying this RFP as attachment 5

(Terms and Conditions); and (4) any terms and conditions specifically set forth in this Section 6 (Contract Terms and Conditions & Administration) set forth under a subsection with a title other than Special Terms & Conditions.

Attachment #1 Cost Proposal

I. Payment Terms

Per *Iowa Code § 8A.514* the State of Iowa is allowed at least sixty (60) days to pay an invoice submitted by a Vendor. Departments may enter into contracts for goods or services on payment terms of less than sixty (60) days if the State may obtain a financial benefit or incentive which would not otherwise be available from the vendor. To that end, please identify:

- What discount will you give for payment in 15 days?
- What discount will you give for payment in 30 days?

In addition to agreeing to payment terms of less than sixty (60) days for an additional discount, the State may also consider these discounts when scoring Cost Proposals.

II. Payment Methods

The State of Iowa, in its sole discretion, will determine the method of payment for goods and/or services as part of any Contract. The State P-card and ePayable solution (EAP) are preferred payment methods, but payments may be made by any of the following methods:

- P-card/EAP,
- EFT/ACH, or
- State Warrant.

Please indicate in your Cost Proposal all of the payment methods you will accept.

As it pertains to EFT/ACH specifically, provide a statement regarding your ability to accept payment by EFT by ACH. Payments are deposited into the financial institution of the claimant's choice three working days from the issue date of the direct deposit.

https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/eft_authorization_form.pdf.

As it pertains to P-cards/EAPs, the State of Iowa's Purchasing Cards (P-cards) and EAP are commercial payment methods utilizing the VISA credit card network. The State of Iowa will not accept price changes or pay additional fees if the Respondent uses the P-card or EAP payment methods. P-card accepting Respondents must abide by the State of Iowa's Terms of P-card Acceptance, as provided in Section 6.3.2.3 of the RFP. **Please also provide a statement regarding your ability to meet the requirements of this subsection, as well as identifying their transaction reporting capabilities (Level I, II, or III).**

This information will not be scored as part of the Cost Proposal or evaluated as part of the Technical Proposal.

III. Cost Proposal Contents

Respondent's Cost Proposal shall include an all-inclusive, itemized, total cost in U.S. Dollars (including all travel, expenses, etc. in prices). All pricing to be FOB Destination, freight cost and all expenses included; and based on Net 60 days payment terms. **The following template is required.** Please use additional pages to provide any additional narrative support for the costing information.

Respondents shall include pricing for implementation, operational costs, and optional costs including but not limited to training, upgrades, and add-ons.

Fixed Costs

a. **Annual license fees**--Enter any annual fees charged for the use of the solution.

b. **Hosting**--Enter any fees for hosting the system and electronic materials (if not included elsewhere)

c. **Transfer/Establishment of Collection**--Enter the cost associated with adding the Consortium's existing collection of materials to the proposed solution, or to establish a new opening day collection if transfer of the current holdings is impossible. Please indicate whether the costs are for transfer or for a new collection in the Cost Proposal.

d. **Other**--Enter any other fixed fees associated with the solution, if applicable. Add additional lines to the template, as needed.

Variable Costs

e. **Per Use/Circulation**--Enter the unit cost per circulation for a given title, periodical, or other electronic material.

f. **Obtaining MARC Records**--Enter the cost associated with obtaining MARC records for purchased materials.

g. **Technical Support**--Enter the cost of ongoing technical support for the solution, if any, and how it may be purchased (Hourly, annually, etc.).

h. **Other**--Enter any other variable, or "per use", fees associated with the solution, if applicable. Add additional lines to the template, as needed.

Respondent Proposal	Startup	Y1	Y2	Y3	Y4	Y5	Total
Fixed Costs (as applicable)							
Annual License							
Hosting							
Transfer/Establishment of Collection							
Other (add description)							
Variable Costs (as applicable)							
Per Use/Circulation							

Obtaining MARC Records (each)							
Technical Support							
Other (add description)							

a. Price Modifications

Respondent guarantees the costs will not exceed or escalate beyond 85% of the Consumer Price Index (CPI) for the Midwest Region (Chicago) during any of the five optional one-year renewal periods.

Attachment #2: Certification/Disclosure Letter

Alterations to this document are prohibited

[Date]

Steve Dawson, Issuing Officer
Office of the Chief Information Officer
200 E. Grand Avenue
Des Moines, IA 50309

Re: RFP #0321-286-01 - PROPOSAL CERTIFICATIONS

Dear Mr. Dawson:

I certify that the contents of the Proposal submitted on behalf of [**Name of Respondent]**_____ (Respondent) in response to **the Office of the State Public Defender** for RFP #0321-286-01 for a Case Management System are true and accurate. I also certify that Respondent has not knowingly made any false statements in its Proposal.

Part I—Certification of Independence

I certify that I am a representative of Respondent expressly authorized to make the following certifications in behalf of Respondent. By submitting a Proposal in response to the RFP, I certify in behalf of the Respondent the following:

1. The Proposal has been developed independently, without consultation, communication or agreement with any employee or consultant to the Agency or with any person serving as a member of the evaluation committee.
2. The Proposal has been developed independently, without consultation, communication or agreement with any other Respondent or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the Proposal has not been and will not be knowingly disclosed, directly or indirectly prior to Agency's issuance of the Notice of Intent to Award the contract.
4. No attempt has been made or will be made by Respondent to induce any other Respondent to submit or not to submit a Proposal for the purpose of restricting competition.
5. No relationship exists or will exist during the contract period between Respondent and the Agency or any other State agency that interferes with fair competition or constitutes a conflict of interest.

Part II—Certification Regarding Registration, Collection, and Remission of Sales and Use Tax

Pursuant to *Iowa Code sections 423.2(10) and 423.5(4) (2016)* a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under *Iowa Code chapter 423* on all sales of tangible personal property and enumerated services. The Act also requires Respondents to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

By submitting a Proposal in response to the (RFP), the Respondent certifies the following (check the applicable box):

- Respondent is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by *Iowa Code Chapter 423*; or

- Respondent is 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(47)* and *(48)(2016)*.

Part III—Certification/Disclosure of Criminal, Regulatory, and Performance Background

The undersigned hereby certifies that, to the best of my knowledge, neither Respondent nor any of its principals, officers, directors, shareholders, partners and managerial and supervisory personnel who will be involved in the performance of the Contract [check all applicable boxes]:

- ☐ are presently or have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal agency or state agency;
- ☐ have within a three (3) year period preceding this Proposal been convicted of, or had a civil judgment rendered against them for:
  - i. ☐ commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes;
  - ii. ☐ commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;
- ☐ are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification;
- ☐ have within a three (3) year period preceding this Proposal had one or more public transactions (federal, state, or local) terminated for cause;
- ☐ have had any damages or penalties assessed against or dispute resolution settlements entered into by Respondent under any existing or past contracts for goods and/or services similar to those sought pursuant to the RFP.
- ☐ are presently involved in any litigation or threatened litigation, administrative or regulatory proceedings, or similar matters.
- ☐ are the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements sought pursuant to the RFP.

If you were unable to check any of the above boxes, please provide additional information about the circumstances surrounding your inability to check the applicable box in the space provided below. Please feel free to include additional pages with further explanation if the space provided below is not sufficient.

Part IV—Certification/Disclosure of Financial Condition

The undersigned hereby certifies that [check all applicable boxes/supply all requested information]:

☐ The Vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: _____

☐ The Vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.

☐ The Vendor is current in all amounts due for payments of federal and state taxes and required

☐ The Vendor has not, in the last three (3) years, undergone a sale or change of control of Vendor, including its business or substantially all its assets.

If you were unable to check any of the above boxes, please provide additional information about the circumstances surrounding your inability to check the applicable box in the space provided below. Please feel free to include additional pages with further explanation if the space provided below is not sufficient. Additionally, if your answers are based on any information of or related to any companies acquired by Vendor in the last three (3) years, please include a description of how those company's(ies) financial histories/stability have been incorporated into your above certifications, and describe how any liabilities you may have incurred in connection with any acquisition affect your company's overall financial stability.

These certifications/disclosures are a material representation of fact upon which the Agency has relied upon in determining which Respondent to award a contract and in entering into a subsequent contract. If it is later determined that Respondent knowingly rendered an erroneous certification or provided false, misleading, or incorrect information in this certification/disclosure, in addition to other remedies available, the Agency may reject the Proposal, declare the Respondent's Proposal or resulting contract void, terminate any subsequent contract, or pursue available remedies including suspension, debarment, or damages for breach of contract.

The above certifications/disclosures are a continuing requirement of the Respondent. Respondent shall provide written notification to the Agency of any such matter commencing or occurring after submission of a Proposal, and with respect to the successful Respondent, following execution of the Contract.

The Agency reserves to right to perform a criminal history check and background investigation(s) of the Respondent, its officers, directors, shareholders, partners and managerial and supervisory personnel who will be involved in the performance of the Contract in verifying the accuracy of the contents of this certification/disclosure and in determining whether Respondent is a Responsible Respondent. Failure to provide full or accurate information may result in disqualification.

_____ _____

Signature Date

_____ _____

Printed Name Title

[This Certification must be signed by an individual authorized to speak for/bind Respondent]

Attachment #3: Authorization to Release Information Letter

Alterations to this document are prohibited, see section 2.14.14.

[Date]

Steve Dawson, Issuing Officer
Office of the Chief Information Officer
200 E. Grand Avenue
Des Moines, IA 50309

Re: **RFP #0321-286-01 -** AUTHORIZATION TO RELEASE INFORMATION

Dear Mr. Dawson:

[Name of Respondent]_____ (Respondent) hereby authorizes Iowa Homeland Security and Emergency Management ("Agency") or a member of the Evaluation Committee to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Respondent in response to RFP #0321-286-01.

The Respondent acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Respondent acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the State or may otherwise hurt its reputation or operations. The Respondent is willing to take that risk.

The Respondent hereby releases, acquits and forever discharges the State of Iowa, the Agency, their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the Agency or the Evaluation Committee in the evaluation and selection of a successful Respondent in response to the RFP.

The Respondent authorizes representatives of the Agency or the Evaluation Committee to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the Respondent's Proposal submitted in response to RFP.

The Respondent further authorizes any and all persons and entities to provide information, data, and opinions with regard to its performance under any contract, agreement, or other business arrangement, its ability to perform, business reputation, and any other matter pertinent to the evaluation of the Respondent's Proposal. The Respondent hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the Respondent that it may have or ever claim to have relating to information, data, opinions, and references supplied to the Agency or the Evaluation Committee in the evaluation and selection of a successful Respondent in response to RFP.

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

_____

Signature

_____ _____

Name and Title of Authorized Representative **Date**

Attachment #4: Form 22 – Request for Confidentiality

SUBMISSION OF THIS FORM 22 IS REQUIRED

THIS FORM 22 (FORM) MUST BE COMPLETED AND INCLUDED WITH YOUR PROPOSAL. THIS FORM 22 IS REQUIRED WHETHER THE PROPOSAL DOES OR DOES NOT CONTAIN INFORMATION FOR WHICH CONFIDENTIAL TREATMENT WILL BE REQUESTED. FAILURE TO SUBMIT A COMPLETED FORM 22 WILL RESULT IN THE PROPOSAL TO BE CONSIDERED NON-RESPONSIVE AND ELIMINATED FROM EVALUATION. COMPLETE PART 1 OF THIS FORM 22 IF PROPOSAL DOES NOT CONTAIN CONFIDENTIAL INFORMATION. COMPLETE PART 2 OF THIS FORM 22 IF PROPOSAL DOES CONTAIN CONFIDENTIAL INFORMATION.

1. Confidential Treatment Is Not Requested

A Respondent not requesting confidential treatment of information contained in its Proposal shall complete Part 1 of Form 22 and submit a signed Form 22 Part 1 with the Proposal.

2. Confidential Treatment of Information is Requested

A Respondent requesting confidential treatment of specific information shall: (1) fully complete and sign Part 2 of Form 22, (2) conspicuously mark the outside of its Proposal as containing confidential information, (3) mark each page upon which the Respondent believes confidential information appears **and CLEARLY IDENTIFY EACH ITEM for which confidential treatment is requested; MARKING A PAGE IN THE PAGE MARGIN IS NOT SUFFICIENT IDENTIFICATION**, and (4) submit a "Public Copy" from which the confidential information has been excised.

Form 22 will not be considered fully complete unless, for each confidentiality request, the Respondent: (1) enumerates the specific grounds in Iowa Code Chapter 22 or other applicable law that supports treatment of the information as confidential, (2) justifies why the information should be maintained in confidence, (3) explains why disclosure of the information would not be in the best interest of the public, and (4) sets forth the name, address, telephone, and e-mail for the person authorized by Respondent to respond to inquiries by the Agency concerning the confidential status of such information.

The Public Copy from which confidential information has been excised is in addition to the number of copies requested in Section 3 of this RFP. The confidential information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the Proposal as possible.

Failure to request information be treated as confidential as specified herein shall relieve Agency and State personnel from any responsibility for maintaining the information in confidence. Respondents may not request confidential treatment with respect to pricing information and transmittal letters. A Respondent's request for confidentiality that does not comply with this form or a Respondent's request for confidentiality on information or material that cannot be held in confidence as set forth herein are grounds for rejecting Respondent's Proposal as non-responsive. Requests to maintain an entire Proposal as confidential will be rejected as non-responsive.

If Agency receives a request for information that Respondent has marked as confidential and if a judicial or administrative proceeding is initiated to compel the release of such information, Respondent shall, at its sole expense, appear in such action and defend its request for confidentiality. If Respondent fails to do so, Agency may release the information or material with or without providing advance notice to Respondent and with or without affording Respondent the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction. Additionally, if Respondent fails to comply with the request process set forth herein, if Respondent's request for confidentiality is unreasonable, or if Respondent rescinds its request for confidential treatment, Agency may release such information or material with or without providing advance notice to Respondent and with or without affording Respondent the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction.

Part 1 – No Confidential Information Provided

Confidential Treatment Is Not Requested

Respondent acknowledges that the proposal response contains no confidential, secret, privileged, or proprietary information. There is no request for confidential treatment of information contained in this proposal response.

This Form must be signed by the individual who signed the Respondent's Proposal. The Respondent shall place this Form completed and signed in its Proposal.

- ***Fill in and sign the following if you have provided no confidential information. If signing this Part 1, do not complete Part 2.***

_____	_____	_____
Company	RFP Number	RFP Title
_____	_____	_____
Signature (required)	Title	Date

(Proceed to the next page only if Confidential Treatment is requested.)

Part 2 - Confidential Treatment is Requested

The below information is to be completed and signed ONLY if Respondent is requesting confidential treatment of any information submitted in its Proposal.

NOTE:

- ***Completion of this Form is the sole means of requesting confidential treatment.***
- ***A Respondent MAY NOT REQUEST that pricing information in proposals be held in confidence.***

Completion of the Form and Agency's acceptance of Respondent's submission does not guarantee the agency will grant Respondent's request for confidentiality. The Agency may reject Respondent's Proposal entirely in the event Respondent requests confidentiality and does not submit a fully completed Form or requests confidentiality for portions of its Proposal that are improper under the RFP.

Please provide the information in the table below. Respondent may add additional lines if necessary or add additional pages using the same format as the table below.

RFP Section :	Respondent must cite the specific grounds in *Iowa Code Chapter 22* or other applicable law which supports treatment of the information as confidential.	Respondent must justify why the information should be kept in confidence.	Respondent must explain why disclosure of the information would not be in the best interest of the public.	Respondent must provide the name, address, telephone, and email for the person at Respondent's organization authorized to respond to inquiries by the Agency concerning the status of confidential information.

This Form must be signed by the individual who signed the Respondent's Proposal. The Respondent shall place this Form completed and signed in its Proposal. A copy of this document shall be placed in all Proposals submitted including the Public Copy.

- ***If confidentiality is requested, failure to provide the information required on this Form may result in rejection of Respondent's submittal to request confidentiality or rejection of the Proposal as being non-responsive.***
- ***Please note that this Form is to be completed and signed only if you are submitting a request for confidential treatment of any information submitted in your Proposal. If signing this Part 2, do not complete Part 1.***

_____	_____	_____
Company	RFP Number	RFP Title
_____	_____	_____
Signature (required)	Title	Date

Attachment #5: Terms and Conditions

NOTE: This is a sample contract, included to outline the general terms and conditions the State anticipates using in the final contract resulting from this RFP. It is provided so that Respondents may list their exceptions to these terms and conditions as required in Section 3 of this RFP. Respondents need not complete or sign this sample contract in their responses.

Iowa Office of the Chief Information Officer
Contracts Declaration & Execution ("CD&E")

<table>
<tr><td colspan="2">Title of Contract: [Title] ("Agreement") pursuant to and incorporating by reference Request for Proposal #_____, entitled _____ ("RFP"), available at _____, and Vendor's responsive Proposal thereto dated __-__-____ ("Proposal").</td><td>Contract Number:</td></tr>
<tr><td colspan="3">State Agency's Name: Iowa Office of the Chief Information Officer ("Agency")</td></tr>
<tr><td colspan="3">Vendor's Name: _____ ("Vendor").</td></tr>
<tr><td>Contract to Begin/Effective Date: Start Date</td><td>Date of Expiration: End Date</td><td>Annual Extensions: Up to Five (5) Annual One Year Renewals.</td></tr>
<tr><td colspan="3"><u>Documents Incorporated/Order of Precedence</u>. This Agreement, any and all attachments to this Agreement which are incorporated by reference as if fully set forth herein, and the RFP and Proposal which are incorporated by reference as if fully set forth herein, together comprise the terms and conditions governing the relationship between the Parties ("Agreement"). In the case of any conflict or inconsistency between the specific provisions of this Agreement, any and all attachments to this Agreement, or the RFP and the Proposal, such conflict or inconsistency shall be resolved in the following order:
1. First by giving preference to any Special Terms and Conditions/Ancillary Agreements addressing compliance concerns;
2. Second by giving preference to the specific provisions of the [Title of Agreement] Agreement;
3. Third by giving preference to specific provisions of the RFP;
4. Fourth by giving preference to the Proposal;
5. Fifth by giving preference to the specific provisions of any Purchasing Instruments (Purchase Order(s)/Statement(s)) executed under the [Title of Agreement] Agreement;</td></tr>
</table>

6. Sixth by giving preference to any other Special Terms and Conditions executed under the [Title of Agreement] Agreement.
Notes:

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the Parties have entered into this Agreement and have caused their duly authorized representatives to execute this Agreement.

Vendor:	
By *(Authorized Signature)*	**Date Signed**
Printed Name and Title of Person Signing	
Address	

State of Iowa, acting by and through the Iowa Office of the Chief Information Officer:	
By *(Authorized Signature)*	**Date Signed**
Printed Name and Title of Person Signing **Annette Dunn, Director**	
Address	

Iowa Office of the Chief Information Officer

[Title of Agreement]

This Agreement for [describe purpose of agreement] is made and is effective as of the date identified on the Contract Declarations and Executions Page (**"Effective Date"**), by and between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer (**"Agency"**), and _____, a corporation organized under the laws of _____ (**"Vendor"**). The parties may be referred to herein individually as a **"Party"** or collectively as the **"Parties."** The Parties agree to the following:

1. Overview.

1.1. Purpose. This Agreement establishes the terms and conditions pursuant to which the Agency may procure an integrated, modern tax administration and management solution, as contemplated by and in accordance with the RFP and as set forth in the Proposal.

1.2. Term. The initial term of this Agreement shall be as stated on the CD&E, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the Agency shall have the option to extend/renew this Agreement as stated on the CD&E. The initial term and any extensions and renewals shall be collectively referred to herein as the **"Term."** The decision to extend or renew this Agreement shall be at the sole option of the Agency and may be exercised by the Agency by providing written notice to Vendor.

2. Definitions. In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

2.1. **"Acceptance"** means the Agency has determined a portion of the Deliverables, Application Services, or System(s) satisfy its Acceptance Tests. **"Final Acceptance"** means the Agency has determined all Deliverables, Application Services, or System(s) satisfy the Agency's Acceptance Tests. **"Non-acceptance"** means the Agency has determined that a portion of or all of the Deliverables, Application Services, or System(s) have not satisfied the Agency's Acceptance Tests.

2.2. **"Acceptance Criteria"** means the Specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, or other criteria designated by the Agency and against which Acceptance Tests are conducted, including any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, the RFP, the Proposal, any Documentation, and any applicable state, federal, foreign, and local laws, rules, and regulations.

2.3. **"Acceptance Tests"** or **"Acceptance Testing"** means the tests, reviews, and other activities that are performed by or on behalf of the Agency to determine whether any or all Deliverables, Application Services, or System(s) meet Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.

2.4. **"Agreement,"** unless the context requires otherwise, means the collective documentation memorializing the terms of the agreement identified on the CD&E and all other attachments to the CD&E, accompanying the CD&E, or executed under or pursuant to the Agreement.

2.5. **"Application Services"** means the hosted applications and related Services as may be further defined and described in the RFP, Proposal, and Special Terms and Conditions

attached hereto and labeled "Application Services/System(s) Description and Related Fees," and related Purchasing Instruments," including any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the Agency's specific needs or use.

2.6. **"Authorized Contractors"** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by the Agency or any State Users to use, maintain, support, modify, enhance, host, or otherwise assist the Agency with any Deliverables, the Application Services, or System(s) provided hereunder.

2.7. **"Confidential Information"** means, subject to any applicable federal, state, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party (**"Disclosing Party"**) to the other Party (**"Receiving Party"**) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent Third Party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency, or regulatory authority, or by applicable regulatory or professional standards and in compliance with section 10.1.5 of this Agreement; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

2.8. **"Customer Data"** means all information, data, materials, or documents (including Confidential Information and Personal Data) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from the Agency, the State of Iowa, State Users, or Users, directly or indirectly, including from any Authorized Contractors of any of the foregoing, related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor in connection with any Customer-Owned Deliverables provided hereunder and all originals and copies of any of the foregoing.

2.9. **"Customer Property"** means any property, whether tangible or intangible, of or belonging to the Agency, including Customer Data and Customer-Owned Deliverables, software, hardware, programs, or other property possessed, owned, or otherwise controlled, maintained, or licensed by the Agency, including Third Party Software or Third Party Intellectual Property.

2.10. **"Customer-Owned Deliverables"** means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of the Agency or for a specific project under this Agreement, including 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, including any underlying Source Code and related Documentation.

2.11. **"Deficiency"** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related to a Deliverable(s), the Application Services, or the System(s), including any failure of a Deliverable(s), the Application Services, or System(s), 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(s), the Application Services, or System(s).

2.12. **"Deliverables"** means all of the goods, Software, work, work product, items, materials, and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with this Agreement, including the Application Services, System(s), Software, and Value-Added Services, Documentation, and Source Code, including as may be more specifically identified, defined, and agreed upon in a Purchasing Instrument executed hereunder.

2.13. **"Documentation"** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel hereunder or otherwise related to or used in conjunction with any Deliverables, the Application Services, or the System(s), in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.

2.14. **"Enhancements"** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications, or other enhancements made to or with respect to the Application Services, System(s), or related Deliverables (including any new releases or versions related thereto) or other Deliverables provided or made available by Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, and all changes to any Documentation made by Vendor, directly or indirectly, as a result of such Enhancements.

2.15. "**Error**" means (i) with respect to any Deliverable(s), the Application Services, or System(s) any defect, flaw, error, bug, or problem of any kind, or any failure of the Deliverable(s), Application Services, or System(s) to conform to an applicable Specification; or (ii) with respect to the Application Services, System(s), or related Deliverables, any failure or problem that impairs or adversely affects the performance, availability, or functionality thereof.

2.16. "**Error Correction**" means either a modification, procedure, or routine that corrects an Error in all material respects.

2.17. **"Escrow Agent"** has the meaning set forth in Section 3.1.3.4.

2.18. **"Escrow Agreement"** has the meaning set forth in Section 3.1.3.4.

2.19. "**Finally Determined**" means when a claim or dispute has been finally determined by a court of competent jurisdiction or other agreed-upon governing body and either (a) no

associated appeal has timely been sought if capable of being sought, or (b) any and all appellate rights properly exercised have otherwise been exhausted.

2.20. **"Governmental Entity"** shall include any governmental entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity includes the Executive Branch, Legislative Branch, Judicial Branch, agencies, independent agencies, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government, including political subdivisions or other local governmental entities.

2.21. **"I.T. Governance Document(s)"** or **"Governance Document(s)"** means any Information Technology policies, standards, processes, guidelines, or procedures developed by the OCIO or the Agency.

2.22. **"Office of the Chief Information Officer"** or **"OCIO"** means the Office of the Chief Information Officer of the State of Iowa established by Iowa Code chapter 8B.

2.23. **"Personal Data"** means any information relating to an identified or identifiable person, including, but not limited to, Social Security or other government-issued identification numbers, account security information, financial account information, credit/debit/gift or other payment card information, account passwords, intellectual property, document identification number, and sensitive or personal data (or equivalent terminology) as defined under any law, statute, directive, regulation, policy, standard, interpretation, order (including any and all legislative or regulatory amendments or successors thereto) regarding privacy, data protection, information security obligations, or the processing of personal data. For the avoidance of doubt, Personal Data shall include:

2.23.1. **"Federal Tax Information"** or **"FTI,"** as defined by Internal Revenue Service (**"IRS"**) Publication 1075 (**"Pub 1075"**), *available at* https://www.irs.gov/pub/irs-pdf/p1075.pdf, and corresponding Internal Revenue Code (**"IRC"**) rules and regulations;

2.23.2. Any data or information covered under or protected by Iowa Code chapter 715C; and

2.23.3. Any data or information covered under or protected by Iowa Code sections 422.20 and 422.72.

For purposes of this definition and this Agreement, **"Process"** or **"Processing"** or **"Processed"** shall mean any operation or set of operations performed upon the Personal Data, whether or not by automatic means, including collection, recording, organization, use, transfer, disclosure, storage, manipulation, combination, and deletion of Personal Data.

2.24. **"Proposal"** or **"Vendor's Proposal"** means Vendor's Response to the RFP.

2.25. **"Purchasing Instrument"** means an individual transactional document executed hereunder for the purchase of Services or Deliverable(s) pursuant to this Agreement, including a **"Purchase Order"** or **"Statement of Work"** executed hereunder (*see* the Sample Purchasing Instrument/Statement of Work attached hereto for a sample Statement of Work), regardless of form, and which identifies the specific Services or Deliverable(s) to be purchased and any Acceptance Criteria or Specifications related thereto.

2.26. **"Release Conditions"** has the meaning set forth in Section 3.1.3.4.2.

2.27. **"Request for Proposal"** or **"RFP"** means the Request for Proposal identified on the CD&E, including any attachments or amendments thereto.

2.28. **"Security Breach"** means the unauthorized acquisition of or access to Customer Data, the Application Services, System(s), or related Deliverables by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, the Application Services, System(s), or related Deliverables, including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. **"Security Breach"** shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.

2.29. "**Services**" may include:

2.29.1. [Describe key services required/sought].

2.29.2. The Application Services and System(s).

2.29.3. Application Services and System(s) maintenance and support services.

2.29.4. Any other services within the scope of the RFP and Proposal, including services considered Value-Added Services, including as may be further defined, described, and agreed upon by the Parties in a Purchasing Instrument executed hereunder.

2.30. **"Software"** means any and all other software, programs, applications, modules, and components, in object code form, all related Documentation, Enhancements, and Source Code, and all copies of the foregoing.

2.31. **"Source Code"** means the human-readable source code, source program, scripts, or programming language, including, but not limited to, HTML, XML, XHTML, Visual Basic, and JAVA, for or related to any Software. Source Code includes all source code listings, instructions (including compile instructions), programmer's notes, commentary, and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.

2.32. **"Source Material"** means, with respect to the Application Services, the Source Code of such software and all related compiler command files, build scripts, scripts relating to the operation and maintenance of such application, application programming interface (API), graphical user interface (GUI), object libraries, all relevant instructions on building the object code of such application, and all documentation relating to the foregoing, such that collectively the foregoing will be sufficient to enable a person possessing reasonable skill and expertise in computer software and information technology to build, load, and operate the machine-executable object code of such application, to maintain and support such application and to effectively use all functions and features of such software.

2.33. **"Special Terms and Conditions"** means any attachment hereto entitled, in whole or in part, **"Special Terms and Conditions."**

2.34. **"Specifications"** means any and all specifications, requirements, technical standards, performance standards, representations, warranties, criteria, and other specifications related to any Deliverables, including the Application Services and System(s), described or stated in this Agreement (including any exhibit or documentation attached to, or provided in connection with, this Agreement), any Purchasing Instrument(s), the RFP, the

Proposal, and, solely to the extent not inconsistent with the foregoing, the Documentation.

2.35. **"State Users"** means the State of Iowa, the Agency, OCIO, and any other Governmental Entity as may be later designated by the Agency in its sole discretion and communicated to Vendor in writing, and any employees or Authorized Contractors of any of the foregoing.

2.36. **"System(s)"** means the [identify/describe System(s)], including any underlying or related platforms and infrastructure, and related Deliverables, as may be further defined and described in the RFP, Proposal, Special Terms and Conditions attached hereto and labeled "Application Services/System(s) Description and related Fees," and related Purchasing Instruments, including any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the Agency's specific needs or use.

2.37. **"Third Party"** means a person or entity (including any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

2.38. **"Third Party Intellectual Property"** shall mean intellectual property, including Third Party Software, licensed, made, conceived, or developed by a Third Party and provided or used by or on behalf of the Agency or Vendor, as applicable, including:

2.38.1. As it relates to intellectual property provided to the Agency by Vendor, intellectual property comprising or embedded in the Application Services, System(s), or any other Services or Deliverables provided by Vendor under this Agreement, including any Third Party Software used by or on behalf of Vendor to host the Application Services or System(s);

2.38.2. As it relates to intellectual property provided to Vendor by the Agency, intellectual property comprising or embedded in any Customer Property, including any Third Party Software licensed to the Agency and accessed or used by Vendor in transitioning the Agency from legacy applications and systems to the Application Services and System(s) provided by Vendor hereunder.

2.39. **"Third Party Software"** means any software owned or licensed by a Third Party.

2.40. **"Users"** means the State Users and any other users of the Application Services or System(s), including external entities or individuals who may enter, upload, download, import, or otherwise access data or information into the System(s) through public-facing web interfaces.

2.41. **"Value-Added Services"** means products, equipment, hardware, Software, or services the Agency procures through Vendor or Vendor Contractors, directly or indirectly, hereunder, including goods or services:

2.41.1. Which may have been expressly identified in the RFP or Proposal as optional goods or services available for purchase hereunder; or

2.41.2. Which are otherwise generally deemed incidental to the total transaction.

2.42. **"Vendor"**, in addition to its meaning in the CD&E, shall, unless the context clearly requires the contrary, be deemed to include Vendor Contractors and Vendor Personnel.

2.43. **"Vendor Personnel"** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Services or Deliverables under this Agreement.

2.44. **"Vendor Contractor(s)"** means any of Vendor's authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Services or Deliverables under this Agreement.

3. Services and Deliverables.

3.1. Performance.

3.1.1. *Generally*. Vendor shall commence, complete, and deliver all work and provide all Services, Deliverables, the Application Services, and System(s) as defined by, described by, and in accordance with the terms, conditions, requirements, Specifications, and Acceptance Criteria forth in this Agreement, including any Special Terms and Conditions, any Purchasing Instrument(s) executed by the Agency hereunder, the RFP, the Proposal, and any Service Level Agreement or any related attachments or documents attached hereto or associated herewith, including a "project plan(s)" or other similarly captioned document. Except as otherwise set forth herein or in a Service Level Agreement attached as Special Terms and Conditions hereto, performance standards, monitoring, and review provisions applicable to specific projects are as set forth in the applicable Purchasing Instrument.

3.1.2. *Purchasing Instruments.*

3.1.2.1. *Generally*. The Agency and Vendor may execute individual Purchasing Instrument(s) identifying specific Services or Deliverables to be purchased and provided hereunder and defining related Acceptance Criteria, Specifications, or terms and conditions associated with the performance and provisioning of such Services or Deliverables. Individual Purchasing Instruments will be effective and become valid and enforceable only when signed by both the Agency and Vendor. Once a Purchasing Instrument has been executed, Vendor will carry out and complete the duties and responsibilities set forth in the applicable Purchasing Instrument in accordance with the terms, conditions, requirements, Specifications, and Acceptance Criteria set forth in this Agreement, including any Special Terms and Conditions, the Purchasing Instrument, the RFP, the Proposal, and any Service Level Agreement or any related attachments or documents attached hereto or associated herewith, including a "project plan(s)" or other similarly captioned document.

3.1.2.2. *Amendments to Purchasing Instruments*. A Purchasing Instrument may be amended, modified, or replaced at any time during the Term upon the mutual written consent of Vendor and the Agency.

3.1.2.3. *Change Order Procedure.* The Agency may at any time request a modification to the scope of a Purchasing Instrument using a change order. The following procedures for a change order shall be followed:

3.1.2.3.1. *Written Request*. The Agency shall specify in writing the desired modifications to the Purchasing Instrument with the same degree of specificity as in the original Purchasing Instrument.

3.1.2.3.2. *Vendor's Response*. Vendor shall submit to the Agency any proposed modifications to the Purchasing Instrument and a firm cost proposal, if applicable, for the requested change order within five (5) business days of receiving the Agency's change order request.

3.1.2.3.3. *Effect of Change Order*. Both Parties must sign and date the change order to authorize the change in the Services or Deliverable(s) described therein and incorporate the changes into the applicable Purchasing Instrument and this Agreement. No Services or Deliverable(s) shall be provided pursuant to the change order, and no payment shall be made on account of the change order until the change order is fully executed by both Parties. Upon such execution, a change order shall alter only that portion of a Purchasing Instrument to which it expressly relates and shall not otherwise affect the terms and conditions of the Purchasing Instrument or this Agreement.

3.1.3. *Delivery*.

3.1.3.1. *Risk of Loss*. To the extent any Deliverable(s), including any hardware or equipment, are mailed or shipped, Vendor or Vendor Contractors shall bear all freight, shipping, handling, and insurance costs for the delivery and shall bear all risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.

3.1.3.2. *Documentation*. Vendor acknowledges and agrees that it or Vendor Contractors shall, at no charge to the Agency, deliver and provide to the Agency all Documentation related to the Applications Services, System(s), Software or other Deliverable(s) that are created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, unless otherwise agreed to by the Agency in writing.

3.1.3.3. *Source Code*. Vendor acknowledges and agrees that it or Vendor Contractors shall deliver and provide to the Agency all Source Code related to any Customer-Owned Deliverables and to any other Software or Deliverables as agreed to in writing by the Parties.

3.1.3.4. *Source Code Escrow*.

3.1.3.4.1. *Escrow Agent*. Vendor, Agency, and an escrow agent approved by the Parties ("Escrow Agent") shall concurrently with execution of this Agreement, enter into a Source Code Escrow

Agreement ("Escrow Agreement"). Immediately following the execution of the Escrow Agreement, Vendor shall deliver to the Escrow Agent for deposit all Source Materials. Vendor shall continually update the Source Material by promptly depositing in the escrow each new release, update, version, enhancement, correction, patch, and improvement of the Services. Vendor's duty to update the Source Material shall continue through the Term.

3.1.3.4.2. *Release Conditions*. In addition to the rights and obligations contained in the Escrow Agreement, the Source Material will be held in the Escrow and the events upon which the Agency shall have access to the Source Material shall include (collectively the "Release Conditions"): (1) the insolvency of Vendor; (2) the making of a general assignment by Vendor for the benefit of its creditors or a filing of a voluntary or involuntary petition in bankruptcy by or against Vendor that is not dismissed within thirty (30) days of the filing thereof; (3) in the event Vendor ceases to provide, maintain, and/or support the Application Services for any reason other than the Agency's failure to pay for, or election not to receive, the Application Services or corresponding Support Services, whichever is applicable, and no other qualified entity has assumed the obligation to provide, maintain, and/or support the Application Services; (4) Vendor violates or commits a material breach of any term or condition of this Agreement and fails to cure said breach within the applicable cure period; (5) Vendor assigns, transfers, delegates, or subcontracts any of its obligations or duties under this Agreement without the prior written consent of the Agency; (6) Vendor violates or commits a breach of any term or condition of the Escrow Agreement, which breach has not been cured by Vendor within any applicable time period stated therein for curing such breach. Notwithstanding any other provision of this Agreement to the contrary, if a Release Condition occurs, the Agency may hire Vendor personnel to assist the Agency with using and understanding the Source Material.

3.1.3.4.3. *Use of Source Material*. Upon the occurrence of a Release Condition (or any other release conditions that may be specified under the Escrow Agreement), the Agency will, upon payment of the duplication cost and other handling charges of the Escrow Agent, be entitled to obtain a copy of the Source Material from the Escrow Agent. The Agency shall be entitled to use the Source Material as needed to remedy the event of release and mitigate any damages arising from such event. Such use will include, but is not limited to, the Agency's right to host, perform its own support and maintenance for, and/or alter or modify the Source Material using its own equipment and employees and/or that or those of third party contractors, including Authorized Contractors. Nothing herein shall relieve Vendor of its obligation to provide Services, including Support Services, as required under this Agreement.

3.1.3.4.4. *Proprietary Rights*. The Source Material referred to herein is subject to the confidentiality and proprietary provisions of Section 12. Notwithstanding the foregoing, following the occurrence of a Release Condition and subsequent release of the Source Material to the Agency, Source Material may be provided to any Authorized Contractor to service, maintain, repair, operate, or otherwise facilitate and continue the use and operation of the Application Services as provided herein. The Agency shall require such Authorized Contractors to execute an agreement protecting the confidentiality of the Source Material consistent with the terms of this Agreement. Should use of the Source Material as provided in this Section involve the use or practice of any patent, copyright, trade secret, trademark or other proprietary information in which Vendor has an interest, Vendor, its assignee, or successors, agree not to assert a claim for patent, copyright, trade secret, trademark or other proprietary information infringement against the Agency provided the use of Application Services and Source Material is in accordance with this Agreement.

3.1.3.4.5. *The Agency's Right to Verify Source Material*. Regardless of whether one of the Release Conditions occurs, the Agency shall have the right, at the Agency's sole expense, to verify (itself or through use of Third Party contractors, including the Escrow Agent) the relevance, completeness, currency, accuracy, and functionality of the Source Material by, among other things, compiling the Source Material and performing test runs for comparison with the capabilities of the Application Services. In the event such testing demonstrates the Source Material does not correspond to the Application Services, Vendor shall reimburse Agency for all costs and fees incurred in the testing and immediately deposit the correct Source Material with the Escrow Agent.

3.1.3.4.6. *Version Verification*. The Escrow Agreement shall provide that, upon the Agency's request, the Escrow Agent shall indicate the version of the Source Materials held in the escrow and the date such Source Materials were received from the Vendor.

3.1.3.4.7. *Agreement Supplementary*. The Escrow Agreement shall be "supplementary" to this Agreement within the meaning of Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). If this Agreement and/or the Escrow Agreement are/is rejected by Vendor as a debtor in possession or a trustee or by any other person or entity under the U.S. Bankruptcy Code, then Agency may elect to retain its rights as provided in Section 365(n). The Parties intend that no bankruptcy or bankruptcy proceeding, petition, law, or regulation, and no other proceeding, petition, law, or regulation of a similar nature in any state or foreign jurisdiction, will impede, delay, or prevent the release of Source Materials to Agency in accordance with the provisions of this Agreement and the Escrow Agreement, and Vendor hereby

conveys and licenses to Agency such rights, including intellectual property rights, as are necessary to allow Agency to lawfully exercise its rights hereunder. This license is granted as of the date of this Agreement and shall predate any bankruptcy petition subsequent to such date.

3.1.3.5. Vendor shall inform the Agency of the availability of an escrow for any Third Party Software solutions it provides to the Agency.

3.1.4. *Value-Added Services*. The Agency may procure Value-Added Services through Vendor. Vendor represents and warrants the following with respect to all Value-Added Services:

3.1.4.1. *Equipment or hardware.* Any equipment or hardware provided hereunder will be new and unused; Title to such equipment or hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions; the Agency's use and possession of such equipment or hardware will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Vendor; and such equipment or hardware will be free of any rightful claim of any Third Party based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

3.1.4.2. *Software*. Vendor shall ensure that all Third Party Software provided hereunder, including Third Party Software comprising or embedded in the Application Services, System(s), or related Deliverables is licensed to the Agency pursuant to a license agreement, the terms and conditions of which are acceptable to the Agency.

3.1.4.3. *Third Parties*. Vendor shall take all action necessary to ensure the Agency is able and entitled to receive and enjoy all warranties, indemnities, or other benefits associated with Value-Added Services provided hereunder. At the Agency's request, Vendor shall assign to the Agency all of licensor's and manufacturer's warranties, indemnities, or other associated benefits pertaining to such Value-Added Services under any related license agreement or other agreement between Vendor and the applicable Third Party.

3.2. <u>Application Services/System</u>.

3.2.1. *Grant of License*. Subject to the terms and conditions of this Agreement, Vendor grants to the Agency, the State of Iowa, State Users, and their Authorized Contractors for the Agency or the State of Iowa's governmental and business activities and purposes, including for the provisioning of information and services to State Users, Users, and, to the extent federal funds are used to pay for the Application Services or System(s), in whole or in part, the federal government, during the Term a non-exclusive license to: (i) access, use, and, to the extent applicable, maintain and support, the Application Services, System(s), and related Deliverables; and (ii) access, use, reproduce, and distribute Documentation.

3.2.2. *Implementation/Configuration*. Vendor will implement, modify, and configure the Application Services, System(s), and related Deliverables to satisfy the Agency's specific needs in accordance with the terms and conditions of applicable Purchasing Instrument(s), the RFP, and Proposal, and any related "project plan(s)" or other similarly captioned document.

3.2.3. *Not Required to Accept or Install Enhancements*. Vendor shall not condition the Agency's rights or Vendor's obligations under this Agreement, or any other contract, on the Agency accepting or installing any Enhancements related to the Application Services, System(s), or related Deliverables.

4. Compensation and Additional Rights and Remedies.

4.1. Pricing/Compensation. The fees for the Services, Deliverables, Application Services, and System shall be in accordance with the RFP and Proposal and as set forth:

4.1.1. In the case of the Application Services and System(s), in the Special Terms and Conditions attached hereto and labeled "Application Services/System(s) Description and related Fees"; and

4.1.2. In the case of all other Services and Deliverables, in the applicable Purchasing Instrument(s).

Failure of the Agency to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of any Services or Deliverables, including the Application Services or System(s), so long as payment of such undisputed fees is made within the applicable cure period. For the avoidance of doubt, in the event of any dispute related to fees, Vendor shall continue to perform and provide Services and Deliverables, including the Application Services or System(s), until such dispute has been Finally Determined by a court of competent jurisdiction or other agreed-upon governing body.

4.2. No Additional Fees. Other than as permitted by Section 4.1 (Pricing/Compensation), the Agency shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement or any Purchasing Instrument(s). For the avoidance of doubt, there shall be no reimbursable expenses associated with this Agreement, and Vendor shall be solely responsible for all other costs, charges, and expenses it incurs in connection with this Agreement, including equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, travel and lodging, and all other operational and administrative costs and expenses.

4.3. Satisfactory Performance. Vendor is not entitled to payment for any Services or Deliverable(s), including the Application Services or System(s), in whole or in part, provided under this Agreement or any Purchasing Instrument(s) if the Agency reasonably determines that such Services or Deliverable(s) have not been satisfactorily or completely delivered or performed, or that such Services or Deliverable(s) fails to meet or conform to any applicable Acceptance Criteria or Specifications or that there is a material Deficiency or Error with respect to such Deliverable(s) or Services.

4.4. Effect of Purchasing Instruments. In no event shall the Agency be obligated to pay Vendor any fees, costs, compensation, or other amounts in excess of the amounts consistent with the RFP or the Proposal for any Services or Deliverable(s), including the Application Services and System(s). In addition, in no event shall the Agency be

obligated to pay Vendor any fees, costs, compensation, or other amounts in excess of the amounts set forth in an applicable Purchasing Instrument or Special Terms and Conditions attached hereto and labeled "Application Services/System(s) Description and related Fees," for any one or more Services or Deliverable(s), including the Application Services or System(s), unless the Agency agrees to pay such fees, costs, compensation, or other amounts pursuant to a duly executed Change Order or written amendment to the applicable Purchasing Instrument or Special Terms and Conditions.

4.5. Payment does not Imply Acceptance. Payment, including final payment, shall not be construed as acceptance of any Services or Deliverables with Deficiencies, Errors, or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the Agency shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the Agency.

4.6. Invoices. Upon receipt of written notice of Acceptance from the Agency with respect to one or more Services or Deliverable(s), or in the frequencies set forth in the applicable Purchasing Instrument or, in the case of the Application Services and System(s), in the Special Terms and Conditions attached hereto and labeled "Application Services/System(s) Description and related Fees," Vendor shall submit an invoice to the Agency requesting payment of the fees or other compensation to which it is entitled under Section 4.1(Pricing/Compensation), less any Retained Amount(s) to be withheld in accordance with Section 4.7 (Retention) or other applicable offsets. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges, or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Agency. The Agency shall verify Vendor's performance/provisioning of Services or Deliverable(s) outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code section 8A.514 and corresponding implementing rules, regulations, and policies. The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Agency shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Agency believes the invoice is inaccurate or incorrect in any way.

4.7. Retention. To secure Vendor's performance under this Agreement, the Agency may retain 15% of the fees or other compensation associated with each Deliverable provided under a Purchasing Instrument (**"Retained Amounts"**) until all Deliverables under such Purchasing Instrument have been supplied/provided and the Agency has given its Final Acceptance. Retained Amounts shall be payable upon the Agency's delivery of written notice of Final Acceptance, subject to the terms and conditions hereof.

4.8. Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Agency the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Vendor or notification by the Agency of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Agency under this Section 4.8 (Erroneous Payments and Credits), the Agency may charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount otherwise allowed by law, whichever is greater. The Agency may, in its sole discretion, elect to have Vendor apply any amounts due and owing the Agency under this Section 4.8

(Erroneous Payments and Credits) against any amounts payable by the Agency under this Agreement.

4.9. Set-off Against Sums Owed by Vendor. In the event Vendor owes the Agency any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Agency may set off such sum against any sum invoiced to the Agency by Vendor in the Agency's sole discretion. Any amounts due the Agency as damages may be deducted by the Agency from any money or sum payable by the Agency to Vendor pursuant to this Agreement or any other agreement between Vendor and the Agency.

4.10. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the Agency or work stoppage by Vendor, in the event the Agency determines:

4.10.1. Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or

4.10.2. Any Deliverable, the Application Services, or System(s) has failed to meet or conform to any applicable Acceptance Criteria or Specification(s) or contains or is experiencing a material Deficiency or Error(s).

No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Agency under this Agreement.

4.11. Correction/Cure. The Agency may correct any Deficiencies or Errors with respect to any Deliverable(s), the Application Services, or System(s), or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies or Errors as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the Agency. The Agency may procure the Deliverable(s) reasonably necessary to correct any Deficiencies or Errors or cure any Vendor default, in which event Vendor shall reimburse the Agency for the actual costs incurred by the Agency for such Deliverable(s) or cure, including the reasonable value of the time expended by the Agency's personnel or its Authorized Contractors to secure substitute Deliverable(s) or cure such default. In addition, Vendor shall cooperate with the Agency or any Third Parties retained by the Agency which assist in curing such default, including by allowing access to any pertinent materials, work product, or intellectual property of Vendor's.

4.12. Error Correction. With respect to each notice from the Agency to Vendor during the Term that notifies Vendor that any Deliverable(s), the Application Services, or System(s) provided by Vendor, including those previously accepted by the Agency, contains or experiences a Deficiency or Error, Vendor shall, at no cost to the Agency, promptly:

4.12.1. Correct the Deficiency or Error and repair the affected Deliverable(s), Application Services, or System(s); and

4.12.2. Provide the Agency with all necessary and related materials related to such repaired or corrected Deliverable(s), Application Services, or System(s) including, to the extent applicable, the provision of new Source Code, master program disks, or other media acceptable to the Agency, and related Documentation.

4.13. Repayment Obligation. In the event that any State of Iowa or federal funds are deferred or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, Vendor will be liable to the Agency for the full amount of any claim disallowed (or the amount of funds expended in violation of such applicable laws) and for all related penalties incurred. If the State of Iowa or any federal agency concludes Vendor has been paid for any cost that is unallowable, unallocable, or unreasonable under this Agreement, Vendor will be liable to the Agency for such cost. Vendor shall pay to the Agency all amounts for which the Vendor is liable under this Section 4.13 (Repayment Obligation) within ten (10) business days of receiving the Agency's written demand or written notice. The Agency may withhold any payment under this Agreement if Vendor fails to timely make any payment required by this Section 4.13 (Repayment Obligation).

4.14. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 4 (Compensation and Additional Rights and Remedies) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

5. Acceptance Tests, Project Management, and Program Management.

5.1. Acceptance Testing. All Deliverables, the Application Services, and the System(s) shall be subject to the Agency's Acceptance Testing and Acceptance, as may be further described in a Purchasing Instrument(s). Upon completion of all work to be performed by Vendor with respect to any Deliverable or group of Deliverables, the Application Services, or the System(s), Vendor shall deliver a written notice to the Agency certifying that the foregoing meets and conforms to applicable Acceptance Criteria and is ready for the Agency to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable(s), Application Services, and System(s) to determine that it meets and operates in accordance with applicable Acceptance Criteria prior to delivering such notice to the Agency. At the Agency's request, Vendor 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 Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable, the Application Services, or System(s), or any portion thereof, evaluated during such Acceptance Testing. If the Agency determines that a Deliverable(s), the Application Services, or the System(s), in whole or in part, satisfies its Acceptance Tests, the Agency shall provide Vendor with notice of Acceptance with respect to such Deliverable(s), the Application Services, and System(s). If the Agency determines that a Deliverable(s), the Application Services, or System(s), in whole or in part, fails to satisfy its Acceptance Tests, the Agency shall provide Vendor with notice of Non-Acceptance with respect to such Deliverable(s), the Application Services, and System(s). In the event the Agency provides notice of Non-Acceptance to Vendor with respect to any Deliverable(s), the Application Services, and System(s), Vendor shall correct and repair such Deliverable(s), the Application Services, and System(s) and submit it to the Agency within ten (10) days of Vendor's receipt of notice of Non-acceptance so the Agency may re-conduct its Acceptance Tests with respect to such Deliverable(s), the Application Services, or System(s). In the event the Agency determines after re-conducting its Acceptance Tests such Deliverable(s), Application Services, and System(s) continue to fail to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to:

5.1.1. Require Vendor to correct and repair such Deliverable(s), Application Services, and System(s) within such period of time as the Agency may specify in a written notice to Vendor;

5.1.2. Refuse to accept such Deliverable(s), Application Services, or System(s) without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such Deliverable(s), the Application Services, or System(s), or receive a refund of any fees or amounts already paid with respect to such Deliverable(s), Application Services, or System(s);

5.1.3. Accept such Deliverable(s), the Application Services, or System(s) 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 or Errors present therein and any reduced value or functionality of such Deliverable(s), the Application Services, or System(s), or the costs likely to be incurred by the Agency to correct such Deficiencies or Errors; or

5.1.4. Terminate the applicable Purchasing Instrument or seek any and all available remedies, including damages. Notwithstanding any other provisions of this Agreement related to termination, the Agency may terminate a Purchasing Instrument in its entirety pursuant to this Section 5.1.4 without providing Vendor any notice or opportunity to cure.

The Agency's right to exercise the foregoing rights and remedies, including termination of the applicable Purchasing Instrument, shall remain in effect until Acceptance Tests are successfully completed to the Agency's satisfaction and the Agency has provided Vendor with written notice of Final Acceptance. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s), the Application Services, and System(s), shall not be construed as a waiver of any of the Agency's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any Deficiency or Error is later discovered with respect to such Deliverable(s), the Application Services, or System(s). In addition, Vendor's receipt of any notice of Acceptance with respect to any Deliverable(s), the Application Services, or System(s) shall not be construed as a waiver by the Agency of its right to refuse to provide notice of Final Acceptance.

5.2. Project Management and Reporting.

5.2.1. *Vendor or Project Manager.* Vendor shall designate, in writing, a Project Manager acceptable to the Agency. Vendor will assign a Project Manager of a management level sufficient to ensure timely responses from all Vendor Personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the Agency prior to his or her appointment as Vendor's Project Manager. Vendor represents and warrants that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her or him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Agency's site as needed during the course of work and will be available either in person, by telephone, or by email to respond promptly during the business day to inquiries from the Agency.

5.2.2. *Review Meetings.* Vendor's Project Manager shall meet weekly with the Agency's project manager and representatives, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor or performance issues. At each review meeting, Vendor's Project Manager shall provide a status report, which shall include, at minimum, the information described in Section 5.2.3 (Reports) and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any Party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance of this Agreement.

5.2.3. *Reports.* Vendor shall provide the Agency with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Services or Deliverables, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Agency may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Agency's approval.

5.2.4. *Problem Reporting Omissions.* The Agency's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity the Agency may have. The Agency's failure to identify the extent of a problem, Deficiency, or Error, or the extent of damages incurred as a result of a problem, Deficiency, or Error, shall not act as a waiver of performance or constitute Acceptance under this Agreement.

6. Ownership and Intellectual Property.

6.1. Ownership of Vendor-Owned Deliverables. Except as specifically granted in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Vendor shall own all Deliverables that were independently and exclusively developed by Vendor prior to the Effective Date of this Agreement (**"Vendor-Owned Deliverables"**). Further, except where a more specific grant of license is set forth in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, with respect to all Deliverables, the grant of license set forth in Section 3.2.1 (Grant of License) shall extend to all Vendor-Owned Deliverables provided hereunder.

6.2. Ownership and Assignment of Customer-Owned Deliverables. Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably assigns, transfers, and conveys to the Agency all right, title and interest in and to Customer-Owned Deliverables. Vendor represents and warrants that the Agency shall acquire good and clear title to all Customer-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including Vendor Contractors and Vendor Personnel. Vendor, Vendor Contractors, and Vendor Personnel shall not retain any property interests or other rights in or to Customer-Owned Deliverables and shall not use any Customer-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency commissioning such Deliverables and the payment of such

royalties or other compensation as the Agency deems appropriate. Immediately upon the request of the Agency, Vendor will deliver to the Agency or destroy, or both, at the Agency's option, all copies of any Customer-Owned Deliverables in the possession of Vendor.

6.3. Waiver. To the extent any of Vendor's, Vendor Contractor's, or any Vendor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights or any rights of attribution or integrity, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the Agency's rights in and to Customer-Owned Deliverables.

6.4. Acknowledgement. Vendor acknowledges and agrees that the Agency, as owner and assignee of Customer-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation:

6.4.1. Obtain, secure, file, and apply for any legal protection necessary to secure or protect any rights in and to Customer-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto;

6.4.2. Adapt, change, modify, edit, or otherwise use Customer-Owned Deliverables as the Agency sees fit, including in combination with the works of others, prepare derivative works based on Customer-Owned Deliverables, and publish, display, perform, host, and distribute throughout the world any Customer-Owned Deliverable(s) in any medium, whether now known or later devised, including any digital or optical medium; and

6.4.3. Make, use, sell, license, sublicense, lease, or distribute Customer-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party, including Vendor Contractors or Vendor Personnel.

6.5. Further Assurances. At the State of Iowa's or Agency's request, Vendor will. both during and after the termination or expiration of this Agreement, execute and deliver such instruments, provide all facts known to it, and take such other action as may be requested by the State of Iowa or Agency to:

6.5.1. Establish, perfect, or protect the Agency's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers, and conveyances set forth in Section 6.2 (Ownership and Assignment of Customer-Owned Deliverables); and

6.5.2. Obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof.

In the event the Agency is unable, after reasonable effort, to secure Vendor's, Vendor Contractor's, or any Vendor Personnel's signature on any letters patent, copyright, or other analogous protection relating to the Customer-Owned Deliverables, for any reason whatsoever, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably designates and appoints the Agency and its duly authorized officers, employees, and agents, as their agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous

protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Vendor.

6.6. Third Party Intellectual Property. Except as otherwise agreed to by the Parties in writing, in the event a Deliverable(s) is comprised of Third Party Intellectual Property, Vendor shall ensure such Deliverables is licensed to the Agency pursuant to a license agreement, the terms and conditions of which are acceptable to the Agency. Unless otherwise agreed to by the Agency in writing, such license shall be an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the Third Party Intellectual Property, and to authorize others to do the same on the Agency's behalf, including its Authorized Contractors.

6.7. Rights of the Federal and State Government. If all or a portion of the funding used to pay for Customer-Owned Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights, including 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 Customer-Owned Deliverables developed under this Agreement and the copyright in and to such Customer-Owned Deliverables.

6.8. Customer Property. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement and in compliance with Agency's security and confidentiality requirements. Customer Property shall at all times remain the property of the Agency or applicable Third Party owning Customer Property that has been licensed to the Agency. Vendor, Vendor Contractors, Vendor Personnel and the Application Services, System(s), or related Deliverables shall comply with any and all the license terms, conditions, or restrictions applicable to any Customer Property that has been licensed to the Agency or otherwise made available or accessible to the Agency or Vendor by a Third Party, including to the extent the Application Services, System(s), or related Deliverables must interface, integrate, or connect to such Customer Property. Vendor shall indemnify and hold harmless the Agency and its 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 arising out of, resulting from, or in any way related to Vendor's, Vendor Contractor's, or Vendor Personnel's, or the Application Services, System(s), or related Deliverables breach of any license terms, conditions, or restrictions applicable to, or violation or misappropriation of any intellectual property rights or interests in, any Customer Property that has been licensed to the Agency or otherwise made available or accessible to the Agency or Vendor by a Third Party.

6.9. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 6 (Ownership and Intellectual Property) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

7. Representations, Warranties, and Covenants.

7.1. Deliverables Free of Deficiencies. Vendor represents and warrants that the Deliverables, Application Services, and System(s), in whole and in part, shall: (i) be free from material Deficiencies and Errors; and (ii) meet, conform to and operate in accordance with all Acceptance Criteria and in accordance with this Agreement. During the Term, Vendor shall, within ten (10) days of receiving notice of such Deficiencies, Errors, or failures from the Agency and at its expense, repair, correct, or replace any Deliverable(s), the Application Services, and System(s) that contains or experiences material Deficiencies or Errors or fails to meet, conform to, or operate in accordance with Acceptance Criteria or Specification(s). The foregoing shall not constitute an exclusive remedy under this Agreement, and the Agency shall be entitled to pursue any other available contractual, legal, or equitable remedies. Vendor shall be available at all reasonable times to assist the Agency with questions, problems, and concerns about the Deliverable(s), the Application Services, and System(s); to inform the Agency promptly of any known Deficiencies or Errors in any Deliverable(s), the Application Services, and System(s); repair and correct any Deliverable(s), the Application Services, and System(s) not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable(s), the Application Services, and System(s) may have been accepted by the Agency; and provide the Agency with all necessary materials and any related Services with respect to such repaired or corrected Deliverable(s), the Application Services, and System(s). Acceptance Testing will not in any way relieve Vendor of its responsibilities to correct any material Deficiency or Error.

7.2. Fitness for Intended Purpose. Vendor represents and warrants that it is fully aware of the Agency's requirements and intended purposes and uses for the Deliverables, the Application Services, and System(s), including as may be further identified or defined in a subsequent Purchasing Instrument executed hereunder, and that the Deliverables, Application Services, and System(s) shall satisfy such requirements, including all Specifications, in all material respects and are fit for their intended purposes and uses.

7.3. Quiet Enjoyment. Vendor represents and warrants that: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide Deliverables, the Application Services, and System(s) to the Agency hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed the Agency hereunder without violating any rights of any Third Party; (ii) it has not previously and will not grant any rights in any Deliverables, the Application Services, and System(s) 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, the Application Services, and System(s) without suit, disruption, or interruption.

7.4. Intellectual Property. Vendor represents and warrants that: (i) the Deliverables, the Application Services, and System(s) (and all intellectual property rights therein and related thereto); and (ii) the Agency's use of, and exercise of any rights with respect to, the Deliverables, the Application Services, and System(s) (and all intellectual property rights therein and related thereto), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress, or other intellectual property right, proprietary right, or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation, or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret related to any Deliverables, the Application Services, and System(s). Vendor 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, Vendor shall, at the Agency's request and at Vendor's sole expense: (i) procure for the Agency the right or license to continue to use the Deliverable(s), the Application Services, and System(s) at issue, or relevant aspect thereof; (ii) replace the infringing, violating, or misappropriated aspects of such Deliverable(s), the Application Services, and System(s) with a functionally equivalent replacement; (iii) modify or replace the affected portion of the Deliverable(s), the Application Services, and System(s) with a functionally equivalent or superior Deliverable(s), Application Services, and System(s) free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable(s) at issue and refund to the Agency all fees, charges, and any other amounts paid by the Agency under this Agreement or any related agreement with respect to such Deliverable(s) or, in the case of the Application Services and System(s), accept an equitable downward adjustment of the fees, charges, and any other amounts paid by the Agency under this Agreement or any related agreement to the extent such infringement, violation, or misappropriation prevents the Agency's use of an affected aspect of the Application Services or System(s). In addition, Vendor agrees to indemnify and hold harmless the Agency and its officers, directors, employees, officials, and agents as provided in the Indemnification section of this Agreement, including for any breach of the representations and warranties made by Vendor in this Section 7.4 (Intellectual Property). The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency under this Agreement or otherwise and shall survive termination of this Agreement.

7.5. Workmanlike Manner. Vendor represents, warrants, and covenants that all Services to be performed under this Agreement shall be performed in a professional, competent, diligent, and workmanlike manner by knowledgeable, trained, and qualified personnel, all in accordance with the terms and conditions of this Agreement 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 Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Vendor of any Services performed in violation of this standard, Vendor shall re-perform the Services at no cost to the Agency, such that the Services are rendered in the above-specified manner, or if Vendor is unable to perform the Services as warranted, Vendor shall reimburse the Agency any fees or compensation paid to Vendor for the unsatisfactory Services.

7.6. Compliance with Law. Vendor represents, warrants, covenants, and promises that Vendor, Vendor Contractors, and Vendor Personnel have complied with, and shall continue to comply, and, to the extent applicable, the Deliverables, Application Services, and System(s) comply with all applicable federal, state, foreign, and local laws, rules, regulations, codes, standards, ordinances, and orders both generally and in connection with the performance of this Agreement, including the following:

7.6.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and corresponding rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the Agency's written request, Vendor shall submit to the Agency a copy of its affirmative action

plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.

7.6.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.

7.6.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.

7.6.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.

7.6.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.1, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.

7.6.6. All applicable I.T. Governance Document(s).

7.6.7. To the extent a portion of the funding used to pay for the Deliverables, Application Services, or System(s) is being provided through a grant from the federal government, any terms or conditions required to be included in a contract between the Agency and a contractor pursuant to applicable federal laws, regulations, circulars, and bulletins, which terms and conditions are incorporated by reference into this Agreement as if fully set forth herein and contractual obligations of Vendor.

7.6.8. IRS Pub 1075.

7.6.9. Iowa Code sections 422.20 and 422.72.

Vendor shall take such steps as necessary to ensure Vendor Contractors and Vendor Personnel are bound by the terms and conditions contained in this Section 7.6 (Compliance with Law). Notwithstanding anything in this Agreement to the contrary, Vendor, Vendor Contractors, and Vendor Personnel's failure to fulfill any requirement set forth in this Section 7.6 (Compliance with Law) shall be regarded as a material breach of this Agreement the Agency may cancel, terminate, or suspend, in whole or in part, this Agreement or any Purchasing Instruments executed hereunder. In addition, the Agency may declare Vendor or Vendor Contractors ineligible for future Agency contracts in accordance with authorized procedures or Vendor or Vendor Contractors may be subject to other sanctions as provided by law or rule.

7.7. No Conflicts. Vendor represents, warrants, and covenants that no relationship existed at the time of the formation of this Agreement, or will exist during the Term of the Agreement, between Vendor, Vendor Contractors, or Vendor Personnel and the Agency or the State of Iowa or any of its employees or Authorized Contractors that is or may constitute a conflict of interest or appearance of impropriety, or that would conflict in any manner or degree with the performance of its obligations under this Agreement. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement and any Purchasing Instruments executed hereunder, and Vendor, Vendor Contractors, and Vendor Personnel shall not engage in or permit any Third Party to engage in any conduct that would violate that chapter.

7.8. Up to Date on Payments. Vendor represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the State of Iowa, including the

payment of taxes and employee benefits, and covenants and warrants it will not become so during the Term, or any extensions thereof.

7.9. Documentation. Vendor represents, warrants, and covenants that during the Term, all Documentation will accurately reflect the operation of any Deliverable(s), the Application Services, and System(s) to which the Documentation pertains, and the Documentation will enable the Agency to use such Deliverable(s), the Application Services, and System(s) for their intended purposes.

7.10. Preservation of Implied Warranties. All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the Services, Deliverables, Application Services, or System(s) 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 warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Services, Deliverables, Application Services, or System(s) provided by Vendor or performance or provisioning thereof.

7.11. Cumulative Warranties. Except to the extent otherwise provided herein, Vendor's warranties provided in this Section 7 (Representations, Warranties, and Covenants) are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Agency.

7.12. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 7 (Representations, Warranties, and Covenants) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

8. Indemnification.

8.1. Generally. Vendor and its successors and permitted assigns shall indemnify and hold harmless the Agency and their employees, officers, board members, agents, representatives, and officials (**"Indemnitees"**) from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs, and any other expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses, and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including any claims related to, resulting from, or arising out of:

8.1.1. Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor, directly or indirectly, of any statement, representation, warranty, or certification in connection with this Agreement that is false, deceptive, or misleading;

8.1.2. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, Vendor Contractors, or Vendor Personnel;

8.1.3. Vendor's, Vendor Contractor's, or Vendor Personnel's performance or attempted performance of this Agreement;

8.1.4. Vendor, Vendor Contractors, or Vendor Personnel's failure to comply with any applicable local, state, and federal laws, rules, ordinances, regulations, standards, or orders in the performance of this Agreement, including Pub 1075;

8.1.5. Any failure by Vendor or Vendor Contractors to make all reports, payments, withholdings, or provide any insurance required by federal and state law, including with respect to Social Security, workers compensation, employee income, the Affordable Care Act, and other taxes, fees, or costs required by Vendor or Vendor Contractors to conduct business in the State of Iowa;

8.1.6. Any claim involving any personal injury or damage to property, including Customer Property, caused, in whole or in part, by Vendor, Vendor Contractors, or Vendor Personnel related to the work performed or any Deliverables, the Application Services, or System(s) provided under this Agreement, including any Security Breach;

8.1.7. Vendor's, Vendor Contractor's, or Vendor Personnel's breach of any license terms, conditions, or restrictions applicable to, or violation or misappropriation of any intellectual property rights or interests in, any Customer Property that has been licensed to the Agency or otherwise made available or accessible to the Agency or Vendor by a Third Party;

8.1.8. Any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation, or security, including any Security Breach caused, in whole or in part, by Vendor, Vendor Contractors, or Vendor Personnel;

8.1.9. Any claim for wages, benefits, compensation, insurance, discrimination, or other similar claims asserted against the Agency by any Vendor Personnel, or any claim, penalties, or fines made, levied, assessed, or imposed by another Governmental Entity against the Agency in any way related to or involving the misclassification of employees as independent contractors or any allegations or findings of the existence of a joint-employment relationship involving any Vendor Personnel; or

8.1.10. 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(s), the Application Services, the System(s), or any use, access to, or the exercise of any rights with respect to any of the foregoing (**"Indemnified Items"**) infringes, violates, or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party (collectively **"Claim(s)"**).

8.2. Infringement Claim Additional Remedy. If the Indemnified Items, or any portion of them, become or are likely to become the subject of a Claim as provided in Section 8.1.10, then, in addition to paying any damages and attorney fees as required above, Vendor shall, at its option, either:

8.2.1. Immediately replace or modify the Indemnified Items, without loss of material functionality or performance, to make them non-infringing, or

8.2.2. Immediately procure for the Agency the right to continue using the Indemnified Items.

Any costs associated with implementing either of the above alternatives will be borne by Vendor. If Vendor fails to provide one of the foregoing remedies within forty-five (45) days of notice of the Claim, in addition to any other remedies available to the Agency under this Agreement, at law, or in equity, the Agency shall have the right, at its sole option, to terminate this Agreement or any applicable Purchasing Instrument, in whole or in part, and have Vendor refund to the Agency all associated fees, compensation or other amounts paid by the Agency.

8.3. Vendor's obligations under this Section 8 (Indemnification) are not limited to Third Party claims but shall also apply to any claims that either Party may assert against the other.

8.4. Vendor's duties, obligations, and liabilities as set forth in this Section 8 (Indemnification) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or any other Indemnitee.

9. Default and Termination.

9.1. Termination for Cause by the Agency. The Agency may terminate this Agreement or a Purchasing Instrument(s) upon written notice of Vendor's breach of any material term, condition, or provision of this Agreement or the applicable Purchasing Instrument, 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 Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for any damages, including any liquidated damages. In addition, the Agency may terminate this Agreement or Purchasing Instrument effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

9.1.1. Vendor, directly or indirectly, furnished any statement, representation, warranty, or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete;

9.1.2. Vendor's or Vendor Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

9.1.3. Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;

9.1.4. Vendor terminates or suspends its business;

9.1.5. Vendor's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;

9.1.6. Vendor or Vendor Personnel has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations, standards, or orders when performing within the scope of this Agreement; or

9.1.7. The Agency determines or believes Vendor has engaged in conduct that has or may expose the Agency to material liability;

9.1.8. Vendor or any Deliverable(s), the Application Services, or the System(s) infringes or allegedly infringes or violates any patent, trademark, copyright,

trade dress, or any other intellectual property right or proprietary right, or misappropriates or allegedly misappropriates a trade secret; or

9.1.9. Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder, or entity having or owning a controlling interest in Vendor:

9.1.9.1. 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;

9.1.9.2. 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;

9.1.9.3. Consenting to any 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;

9.1.9.4. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

9.1.9.5. Making an assignment for the benefit of creditors;

9.1.9.6. 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 Vendor's performance of its obligations under this Agreement; or

9.1.9.7. Taking any action to authorize any of the foregoing.

The right to terminate this Agreement or applicable Purchasing Instrument pursuant to this Section 9.1 (Termination for Cause by the Agency) shall be in addition to and not exclusive of other remedies available to the Agency and, notwithstanding any termination, the Agency shall be entitled to exercise any other rights and pursue any remedies available under this Agreement, in law, at equity, or otherwise. Vendor shall notify the Agency in writing if any of the foregoing events occur that would authorize the Agency to immediately terminate this Agreement or a Purchasing Instrument.

9.2. Termination for Cause by Vendor. Vendor may only terminate an applicable Purchasing Instrument upon written notice of the breach by the Agency of any material term, condition, or provision of this Agreement related thereto, if such breach is not cured within sixty (60) days of the Agency's receipt of Vendor's written notice of breach.

9.3. Termination for Convenience. Following thirty (30) days written notice, the Agency may terminate this Agreement or a Purchasing Instrument, in whole or in part, for convenience

without the payment of any penalty or incurring any further obligation or liability to Vendor. Termination for convenience may be for any reason or no reason at all.

9.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, the Agency shall, upon written notice, have the right to terminate this Agreement or a Purchasing Instrument, in whole or in part, without penalty or liability and without any advance notice as a result of any of the following:

9.4.1. The legislature, governor, or other applicable governing body fail, in the sole opinion of the Agency, to appropriate funds sufficient to allow the Agency to either meet its obligations under this Agreement or the applicable Purchasing Instrument or to operate as required and to fulfill its obligations under this Agreement or the applicable Purchasing Instrument;

9.4.2. 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;

9.4.3. If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified;

9.4.4. If the Agency's duties, programs, or responsibilities are modified or materially altered; or

9.4.5. If there is a decision of any court, administrative law judge, or 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 Agreement or the applicable Purchasing Instrument.

9.5. Limitation of Payment Obligations. In the event of a termination of this Agreement or a Purchasing Instrument for any reason (except for termination by the Agency pursuant to Section 9.1 (Termination for Cause by the Agency)), the Agency shall pay only those amounts, if any, due and owing to Vendor for Services, Deliverables, the Application Services, or the System(s) for which Acceptance has been provided by the Agency up to and including the date of termination of this Agreement or the applicable Purchasing Instrument and for which the Agency is otherwise obligated to pay pursuant to this Agreement; provided however, that the Agency's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 9.5 (Limitation of Payment Obligations) 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 Vendor's breach of this Agreement or any amounts otherwise withheld by the Agency in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, the Agency shall not be liable, under any circumstances, for any of the following:

9.5.1. The payment of unemployment compensation to Vendor Personnel;

9.5.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

9.5.3. Any costs incurred by Vendor, Vendor Contractors, or Vendor Personnel in the performance of the Agreement, including startup costs, overhead, or other costs associated with the performance of the Agreement;

9.5.4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement; or

9.5.5. Any taxes Vendor may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes, or property taxes.

9.6. Vendor's Termination or Expiration Duties. As it relates to this Agreement or any Purchasing Instrument executed hereunder, upon receipt of notice of termination, upon expiration, or upon request of the Agency, Vendor shall:

9.6.1. Except as otherwise directed by the Agency pursuant to Section 9.6.6, cease work under this Agreement or the applicable Purchasing Instrument 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, expiration, or request, describing the status of all work performed under the Agreement and such other matters as the Agency may require.

9.6.2. As directed by the Agency, immediately cease using and return to the Agency any Customer Property provided by the Agency, directly or indirectly, to Vendor or Customer-Owned Deliverables prepared or developed by Vendor for the Agency hereunder.

9.6.3. Comply with any directions related to Vendor's destruction or return of Customer Data in accordance with Section 10.1.2 (Destruction or Return of Customer Data).

9.6.4. Immediately return or refund to the Agency any payments made by the Agency for Deliverables, Services, the Application Services, or System(s) that were not rendered or provided by Vendor, including as it relates to any pre-paid fees.

9.6.5. Immediately deliver to the Agency any and all Deliverables, including Customer-Owned Deliverables, Software, Source Code, or Documentation, for which the Agency has a property interest that is in the possession of or under the control of Vendor, Vendor Contractors, or Vendor Personnel in whatever stage of development or form at the time of such termination, expiration, or request.

9.6.6. Continue to perform and provide such Services, Deliverables, Application Services, or System(s) under this Agreement as the Agency may request for a transition period of up to 365 days from the effective date of such termination or expiration. As part of such request, the Agency will inform Vendor of the number of days during which Vendor will perform or provide transition and other related Services, Deliverables, Application Services, or System(s) (**"Transition Period"**). During the Transition Period, Vendor will take all actions as may be necessary or requested by the Agency to accomplish a complete and timely transition of the Services, Deliverables, Application Services, or System(s) from Vendor to the Agency or to any Authorized Contractor hired or utilized by the Agency to provide any replacement or similar Services, Deliverables, Application Services, or System(s) (**"New Contractor"**). Vendor will use its best efforts to cooperate with the Agency

and any New Contractor, and to fully comply with all requests of the Agency or the New Contractor to effect a smooth and timely transition and to ensure there is no interruption of any Services, Deliverables, Application Services, or System(s). Vendor agrees that it will perform all transition services in good faith and in a professional and businesslike manner and shall comply with all reasonable requests of the Agency or any New Contractor to assist in the effort to accomplish a successful, seamless, and unhindered transition and transfer of Vendor's responsibilities under this Agreement or applicable Purchasing Instrument(s). During the Transition Period, and solely to the extent there are legally available funds to do so, the Agency agrees to pay Vendor any fees to which Vendor would be entitled under this Agreement for Services, Deliverables, the Application Services, or System(s) performed or provided during such period; provided this Agreement was not terminated pursuant to Section 9.1 (Termination for Cause by the Agency) and Vendor continues to be in full compliance with all terms and conditions of this Agreement during the Transition Period. In the event the Agency's request for transition assistance does not require Vendor to continue providing all of the Services, Deliverables, Application Services, or System(s) under this Agreement or applicable Purchasing Instrument, the Parties will negotiate in good faith an equitable downward adjustment in the fees which are otherwise payable to Vendor.

Vendor's duties, obligations, and liabilities as set forth in this Section 9.6 (Default and Termination) shall survive termination of this Agreement.

9.7. Survival. Expiration or termination of this Agreement or a Purchasing Instrument for any reason will not release either Party from any duties, liabilities, or obligations set forth in this Agreement which:

9.7.1. The Parties have expressly agreed in writing survive any such expiration or termination, including as set forth in the following Sections:

9.7.1.1. 4 (Compensation and Additional Rights and Remedies);

9.7.1.2. 6 (Ownership and Intellectual Property);

9.7.1.3. 7 (Representations, Warranties, and Covenants);

9.7.1.4. 8 (Indemnification);

9.7.1.5. 9 (Term and Termination);

9.7.1.6. 10 (Confidentiality);

9.7.1.7. 11 (Security/Privacy, Business Continuity, and Disaster Recovery); and

9.7.1.8. 12 (Contract Administration).

9.7.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

10. Confidentiality.

10.1. Vendor's Treatment of Confidential Information.

10.1.1. *Limited Access.* Customer Data shall at all times remain the property of the Agency, and the Agency shall retain exclusive rights thereto and ownership thereof. Vendor, Vendor Contractors, and Vendor Personnel may have access

to Customer Data solely to the extent necessary to carry out their duties under the Agreement. Vendor, Vendor Contractors, or Vendor Personnel shall presume all Customer Data is considered confidential, hold all Customer Data in the strictest confidence, and use and permit use of Customer Data solely for the purposes of providing Services, Deliverables, the Application Services, and System(s) under this Agreement, subject to any restrictions set forth herein or in any state and federal laws, rules, regulations, standards, and orders applicable either during the Term or thereafter. Vendor, Vendor Contractors, and Vendor Personnel shall not gather, store, log, archive, use, or otherwise retain Customer Data in any manner other than as expressly authorized by this Agreement and will not disclose, distribute, sell, commercially or politically exploit, share, rent, assign, lease, or otherwise transfer or disseminate Customer Data to any Third Party, except as expressly permitted hereunder or as Vendor may be expressly directed in advance by the Agency in writing. Vendor, Vendor Contractors, and Vendor Personnel shall not remove from any Agency facilities or retain a copy of any Customer Data unless such removal or retention is necessary to provide or perform Services, Deliverables, the Application Services, or System(s) to fulfill their obligations under this Agreement or is otherwise approved by the Agency in writing. Vendor will immediately report the unauthorized disclosure of Customer Data to the Agency.

10.1.2. *Destruction or Return of Customer Data*. Upon completion of duties under this Contract or upon the specific direction of the Department, the contractor shall certify that the tax information processed and any output generated during the performance of duties under this Contract has been completely purged from all information storage components, including, but not limited to data center facility, laptops, computers, and other storage devices. If immediate purging of all information storage components is not possible, the contractor shall certify that any tax information remaining in any storage component shall be safeguarded to prevent unauthorized disclosures until it has been purged. Once all tax information processed and output generated has been completely purged, the contractor shall submit a signed certification to the Department to that effect.

10.1.2.1. To the extent Vendor is required to destroy Customer Data pursuant to this Section 10.1.2 (Destruction or Return of Customer Data) or any other part of this Agreement, Customer Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology (**"NIST"**)-approved methods.

10.1.3. *Compelled Disclosures*. In the event that a subpoena or other legal process is served upon the contractor for records containing tax information, the contractor shall promptly notify the Department and cooperate with the Department and the IRS in any lawful effort to protect the tax information.

10.1.4. Vendor shall comply with all requirements set forth in Special Terms and Conditions/Ancillary Agreement #001, which is incorporated herein. If any portion of this Agreement conflicts with Special Terms and Conditions/Ancillary Agreement #001, the conflicting clauses shall be read to maximize protection of IDR's Data.

10.2. <u>Treatment of Vendor's Confidential Information</u>.

10.2.1. *Safeguarding Obligation.* Except as provided or contemplated herein, and subject to applicable state, federal, or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), the Agency shall not intentionally disclose Vendor's Confidential Information to a Third Party (excluding the Agency's Authorized Contractors) without the prior written consent of Vendor.

10.2.2. *Destruction or Return of Vendor's Confidential Information*. Upon termination or expiration of this Agreement or an applicable Purchasing Instrument, the Agency shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items subject to any continuing licenses inuring to the benefit of the Agency hereunder or that are required for use of any Customer-Owned Deliverables or other Deliverables to which the Agency has a continued right to use).

10.2.3. *Compelled Disclosures.* Notwithstanding and in addition to the foregoing, the Agency may disclose Vendor's Confidential Information:

10.2.3.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative, or regulatory processes;

10.2.3.2. Pursuant to any applicable laws, rules, or regulations;

10.2.3.3. If the Agency reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or

10.2.3.4. If the Agency, in the Agency's sole discretion, determines Vendor has not provided or is unwilling to provide facts sufficient to enable the Agency to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any of Vendor's Confidential Information as permitted above, the Agency shall provide reasonable notice to Vendor of the circumstances giving rise to such disclosure. Vendor agrees to indemnify and hold harmless the Agency and its 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 value of time of the Attorney General's Office and the costs, expenses, and attorney fees of other counsel retained by or on behalf of the Agency) arising out of, resulting from, or in any way related to any judgments or damages awarded against any of the foregoing entities or individuals in favor of a Third Party requesting any of Vendor's Confidential Information against the Agency or any such entities or individuals.

10.3. Open Records and Electronic Discovery Requests and Records Retention. Vendor will, upon the Agency's request and within any time period specified by the Agency, take all actions requested by the Agency to assist it in complying timely with any request for

Customer Data or other data or information that may be made by any Third Party in accordance with applicable public or open records laws (including Iowa Code Chapter 22) or in connection with any subpoena, court order, discovery request, regulatory or criminal investigation or proceeding, or any other matter that may require the Agency to produce or provide Customer Data or other data or information to a Third Party. Vendor will produce and provide all Customer Data or other data or information within the time period set forth in the Agency's request. Vendor will take all steps necessary to ensure Customer Data is stored and maintained in its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon the Agency's request, take all actions requested by the Agency to assist it in complying with any federal, state, or local record retention requirements, policies, procedures, or other similar requirements.

10.4. Non-Exclusive Equitable Remedy. Each Party acknowledges and agrees that due to the unique nature of Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or Third Parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section 10 (Confidentiality) will constitute a material breach of this Agreement and be grounds for immediate termination of any applicable Purchasing Instrument, or in the Agency's case the Agreement, in the exclusive discretion of the non-breaching Party.

10.5. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 10 (Confidentiality) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

11. Security/Privacy, Business Continuity, and Disaster Recovery.

11.1. Data Protection. Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data, Customer Property, and the Application Services, System(s), or any related Deliverables. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:

11.1.1. Implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, theft, or modification of or to Customer Data, Customer Property, the Application Services, System(s), or any related Deliverables. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53 Revision 4 and ISO27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard their own Confidential Information of like importance. In addition, such security measures, to the extent applicable, shall comply with, and shall enable the Agency to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, policies, or procedures ordinances, codes, regulations, and orders related to such security measures or other security,

privacy, or safeguarding requirements, including applicable I.T. Governance Document(s).

11.1.2. All Customer Data shall be encrypted at rest and in transit with controlled access and the Application Services, System(s), and any related Deliverables shall use TLS 1.2 or higher. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor, Vendor Contractors, and Vendor Personnel are responsible for encryption of Customer Data in their possession. Additionally, Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless the Agency approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.

11.1.3. Storage, Processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America. Vendor shall not allow Vendor Personnel to store, Process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.

11.1.4. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support. Vendor utilize a Follow-the-Sun model when providing technical user support on a 24/7 basis.

11.2. Additional Hosting Terms.

11.2.1. *Import and Export of Data.* The Agency or its Authorized Contractors shall have the ability to import or export data or information, including Customer Data, in whole or in part to or from the System(s) at no charge, and in such formats as may be acceptable to the Agency, without interference from Vendor. In the event the Agency is unable to successfully import or export data and information in whole or in part, Vendor shall assist the Agency in doing so at no charge. As it relates to the export of such data and information, Vendor shall provide to or ensure that the Agency has obtained an export of any requested data or information within one (1) day of any request in the format specified by the Agency.

11.2.2. *Retention of Customer Data*. Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor shall not take any action to intentionally erase any Customer Data until otherwise directed by the Agency in accordance with Section 10.1.2 (Destruction or Return of Customer Data).

11.2.3. *Compliance/Audits*.

11.2.3.1. *Compliance*. Annually throughout the term, Vendor shall obtain and provide the Agency upon request, at its own cost, an independent, Third Party certificate of attestation certifying that the Application Services and System(s) complies with NIST 800-53 and IRS Publication 1075. This includes Federal Risk

and Authorization Management Program (FedRAMP) certification for a System hosted in a cloud environment.

11.2.3.2. In addition to the requirements in Section 11.2.3.1, Vendor may also, at its own cost, provide any of the following:

11.2.3.2.1. An independent, Third Party certificate of audit certifying that the Application Services and System(s) complies with NIST 800-53, Revision 4 controls;

11.2.3.2.2. An ISO/IEC 27001:2005 certification;

11.2.3.2.3. Test or assessment results of an independent, Third Party assessment of application scans using the Open Web Application Security Project (OWASP) Top Ten List;

11.2.3.2.4. Test results of a penetration test of the System(s) conducted by an independent, Third Party;

11.2.3.2.5. A copy of Vendor's annual SOC 2 type 2 report (for all Trust Services Principles); and

11.2.3.2.6. A Vendor-produced remediation plan resulting from items 11.2.3.1.1 through 11.2.3.1.5, inclusive.

11.2.3.2.7. Statement on Standards for Attestation Engagement (SSAE) 18 of Vendor's operations, information security program, and disaster recovery/business continuity plan

11.2.3.3. *Security Audit*. During the Term, the Agency or its Authorized Contractor(s) may perform security audits/scans of Vendor's environment, including unannounced penetration and security tests. The Agency's regulators (including any federal agencies providing funds used to pay for the Application Services, System(s), or Deliverables, in whole or in part, or which regulate the security or safeguarding of any Customer Data stored, Processed, or housed in the System(s)) shall have the same right upon request. Vendor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

11.2.3.4. *Access to Security Logs and Reports*. Vendor shall provide security logs and reports to the Agency or its Authorized Contractors in a mutually agreeable format upon request. Such reports shall include, at minimum, latency statistics, user access summaries, user access IP address summaries, and user access history and security logs for all the Application Services, System(s), and related Deliverables.

11.3. Personnel Safeguards.

11.3.1. *Background Checks.*

11.3.1.1. *Floor*. Vendor shall conduct background checks in compliance with IRS Publication 1075 on all Vendor Personnel. Vendor shall provide the Agency with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.

11.3.1.1.1. If the criminal history check reveals a conviction, Vendor shall work with Agency to review the conviction and any additional information provided by the applicant. The existence of a conviction does not automatically disqualify an applicant or employee from performance on this performance or provision of Services or Deliverables under this Agreement. Decisions regarding assignment to this Agreement will be determined on a case-by-case basis and consideration will include but not be limited to:

11.3.1.1.1.1. The nature of the conviction.

11.3.1.1.1.2. The length of time between the offense and the employment decision.

11.3.1.1.1.3. Number of offenses.

11.3.1.1.1.4. Relatedness of the conviction to the duties and responsibilities of the position.

11.3.1.1.1.5. Efforts at rehabilitation.

11.3.1.1.1.6. Accuracy of the information that the applicant provided on the employment application.

11.3.1.2. Absent exigent circumstances, applicants and employees who have been convicted of crimes involving crimes of dishonesty, financial crimes, and crimes involving the misuse of confidential information shall be disqualified from designation as Vendor Personnel.

11.3.1.3. Deferred judgments shall be considered in all background investigations.

11.3.1.4. *Additional Screening*. The Agency reserves the right to subject Vendor Personnel to additional background checks at any time prior to or during any engagement. Such background checks may include a work history, financial review, request for criminal history data, or local or state criminal history check, national criminal history check through the Federal Bureau of Investigation (**"FBI"**), or other background check requirement imposed or permitted by law, rule, regulation, order, or policy. Vendor Personnel may be required to authorize the release of the results of criminal history checks, including those through the FBI, to one or more other Governmental Entities. Such

background checks may be conducted by the Agency or its Authorized Contractors. The Agency may also require Vendor to conduct a work history or financial review of Vendor Personnel. Vendor shall provide the Agency with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.

11.3.1.5. Vendor shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor or the Agency or its Authorized Contractors.

11.3.2. *Right to Remove Individuals.* Should the Agency be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel, the Agency may request the replacement of such Vendor Personnel (**"Replacement Request"**). The Replacement Request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. If the Agency, in its sole discretion, determines Vendor Personnel pose a potential security risk and notifies Vendor of such security risk in its Replacement Request, Vendor shall immediately remove such individual; any replacement furnished by Vendor in connection with such a request may not perform or provide Services or Deliverables to the Agency unless and until the Agency gives its consent to Vendor's use of such replacement.

11.3.3. *Security Awareness Training.* Vendor shall promote and maintain an awareness of the importance of securing, safeguarding, and otherwise appropriately handling Customer Property, including Customer Data, among Vendor Personnel, including but not limited to, Agency's annual security training.

11.3.4. *Separation of Job Duties.* Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Contractors and Vendor Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Property and Customer Data to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Services, Deliverables, the Application Services, and System(s) hereunder.

11.3.5. *Non-disclosure/Confidentiality Agreements*. Vendor Personnel are required to sign the Agency's standard confidentiality or non-disclosure agreement(s), or other confidentiality or non-disclosure agreement(s), including as may be required by applicable law, rule, regulation, or policy.

11.4. Security Breaches.

11.4.1. *Reporting*. Vendor or Vendor Contractors will report to the Agency within two (2) hours of Vendor's or Vendor Contractor's discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to the Agency within forty-eight (48) hours of discovery or notification of the actual or suspected Security Breach. Such written confirmation shall

include an explanation of the nature of and circumstances surrounding such actual or suspected Security Breach.

11.4.2. *Investigations in Response to Actual or Suspected Breach*. Vendor and Vendor Contractors agree, at their sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the Agency in resolving and mitigating any damage from such actual or suspected Security Breach at Vendor's sole cost. At no additional cost to the Agency or the State of Iowa, Vendor and Vendor Contractor will fully cooperate with the Agency and its Authorized Contractors in investigating such actual or suspected Security Breach, including reviewing and assisting in reviewing system, application, and access logs, conducting and assisting in conducting forensic audits of relevant systems, imaging and assisting in imaging relevant media, and making personnel available for interview. On notice of any actual or suspected Security Breach, Vendor and Vendor Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. Vendor and Vendor Contractor will deliver to the Agency a root cause assessment and future incident mitigation plan and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. Vendor agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless the Agency specifically requests Vendor do so in writing.

11.4.3. *Additional Remedies in the Event of Actual Breach*. Upon the Agency's determination that a Security Breach involving or relating to Customer Data, the Application Services, System(s), or related Deliverables has occurred, Vendor and Vendor Contractors shall fully cooperate with the Agency in fully rectifying and responding to such Security Breach. Notwithstanding any provision in this Agreement or any other related agreement to the contrary, Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (including the reasonable value of time of the Iowa Attorney General's Office or the costs, expenses and attorney fees of other counsel retained by the State of Iowa or the Agency) related to, arising out of, or incurred by or on behalf of the Agency as a result of, any Security Breach caused directly or indirectly, in whole or in part, by any act, error or omission, negligence, or misconduct of Vendor, Vendor Contractors, or Vendor Personnel, including the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); opening and closing accounts, printing new checks, embossing new cards; forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all other costs associated with corrective or other actions that are taken to mitigate or address the Security Breach. The Agency shall determine, in its sole discretion, the content and means of delivery of any such notifications or reports. Vendor will reimburse or pay to the Agency all

such expenses, fees, damages, and all other amounts within fifteen (15) business days of the date of any written demand or request delivered to Vendor.

11.4.4. Notwithstanding other requirements in this Agreement, if there is a breach of any "personal information" as that term is defined and governed by Iowa Code chapter 715C, that has been provided to Vendor or Vendor Contractor pursuant to this Agreement, Vendor understands and agrees that Vendor, not the Agency, shall be responsible for complying with any applicable provisions of Iowa Code chapter 715C, including but not limited to any applicable consumer notification requirements.

11.5. Disaster Recovery and Business Continuity.

11.5.1. *Creation, Maintenance, and Testing*. Vendor shall maintain a Business Continuity and Disaster Recovery Plan for the Application Services, System(s), and related Deliverables ("**Plan**"), and implement such plan in the event of any unplanned interruption. Upon the Agency's request, Vendor shall provide the Agency with a copy of Vendor's current Plan, revision history, and any reports or summaries relating to past testing of the Plan. Vendor shall actively test, review, and update the Plan on at least an annual basis using American Institute of Certified Public Accountants standards and other industry best practices as guidance. Vendor shall promptly provide the Agency with copies of all reports and summaries resulting from any testing of the Plan and with copies of any updates to the Plan. All updates shall be subject to the requirements of this Section 11.5 (Disaster Recovery/Business Continuity). Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard the Customer Data and the data processing capability and availability of the Application Services, System(s), and related Deliverables. Additional disaster recovery and business continuity requirements may be set forth in individual Purchasing Instruments.

11.5.2. *Activation of Plan*. Vendor shall immediately notify the Agency of any disaster or other event that results in the activation of the Plan. If Vendor fails to reinstate the Application Services, System(s), and related Deliverables impacted by any such disaster within the periods of time set forth in the Plan, the Agency may, in addition to any other remedies available hereunder, immediately terminate this Agreement or applicable Purchasing Instrument as a non-curable default and without any penalty or liability. Without limiting Vendor's obligations under this Agreement, whenever a disaster causes Vendor to allocate limited resources between or among Vendor's customers, the Agency shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 12.26 (Force Majeure) shall not limit Vendor's obligations under this Section 11 (Security/Privacy, Business Continuity, and Disaster Recovery). Further, nothing in this shall be construed as in any way limiting Vendor's obligations elsewhere in this Agreement, including any applicable services levels and related remedies set forth in any Service-Level Agreement attached hereto as Special Terms and Conditions.

11.5.3. *Backup and Recovery*. Except as otherwise set forth in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and

Conditions, Vendor is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within two (2) hours at any point in time. Additionally, unless otherwise provided in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and Conditions, Vendor shall store a backup of Customer Data in an off-site "hardened" facility no less than daily, maintaining the security of Customer Data, consistent with the security requirements set forth in this Section 11 (Security/Privacy, Business Continuity, and Disaster Recovery). To the extent applicable in calculating the fees to be charged to the Agency under this Agreement, any backups of Customer Data shall not be considered in calculating storage used by the Agency.

11.5.4. *Loss of Data*. In the event of any Security Breach or any other event that compromises the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Vendor or Vendor Contractors related to the protection of the security, confidentiality, or integrity of Customer Data, Vendor shall, in addition to any other remedies available pursuant to this Agreement, or otherwise available at law or in equity, to the extent applicable: (a) notify the Agency as soon as practicable but no later than two (2) hours of becoming aware of such occurrence; (b) send the Agency written confirmation within forty-eight (48) hours of discovery or notification of the occurrence; (c) cooperate with Agency in investigating the occurrence, including, but not limited to providing to the Agency and assisting the Agency in reviewing system, application, and access logs, conducting forensic audits of relevant systems, imaging relevant media, and making personnel available for interview; (d) indemnify and hold harmless the Agency and its employees, officers, board members, agents, representatives, and officials from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and expenses (including the reasonable value of time of the Iowa Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of such occurrence; (e) be responsible for recreating lost Customer Data in the manner and on the schedule specified by the Agency without charge; and, (g) provide to the Agency a detailed plan within ten (10) calendar days of the occurrence describing the measures Vendor will undertake to prevent a future occurrence.

11.6. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 11 (Security/Privacy, Business Continuity, and Disaster Recovery) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Agency or its Authorized Contractors.

12. General Provisions.

12.1. Ancillary Agreements and Non-Disclosure Agreements. Vendor or Vendor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to the Agency in connection with this Agreement,

including executing a Confidential Information Requirements for Vendors addendum as required by Pub 1075. Such Ancillary Agreements shall be attached as Special Terms and Conditions hereto and incorporated by reference as if fully set forth herein.

12.2. Immigration Status. Vendor and Vendor Contractors are responsible for ensuring Vendor Personnel possess and maintain valid Visas for any Vendor Personnel for whom a Visa is required. As outlined in section 11.3.1, the Agency requires Vendor or Vendor Contractors to conduct E-Verify employment-eligibility verifications of Vendor Personnel performing or providing Services or Deliverables hereunder, including any Vendor Personnel who may have access to Customer Property or Customer Data. Vendor shall be responsible for all costs associated with the E-Verify process and shall provide the Agency with the results of this process in a mutually agreeable form and manner at the time or in intervals as mutually agreed to by the Parties.

12.3. No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor, Vendor Contractors, and Vendor Personnel shall not make any media release or other public announcement relating to or referring to this Agreement, a Purchasing Instrument, or the Services or Deliverables provided hereunder without the Agency's prior written consent. Vendor, Vendor Contractors, and Vendor Personnel shall acquire no right to use, and shall not use, without the Agency's written consent, the terms or existence of this Agreement, Purchasing Instrument, or the fact of providing Services or Deliverables to the Agency hereunder or the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the State of Iowa, its 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 or Vendor's Services or Deliverables by the State of Iowa; or (c) in any manner other than expressly in accordance with this Agreement.

12.4. Independent Contractor. Vendor is an independent contractor performing services for the Agency.

12.4.1. Vendor, Vendor Contractors, and Vendor Personnel shall not hold themselves out as an employee or agent of the State of Iowa or its related entities.

12.4.2. Except as otherwise expressly provided herein or in a Purchasing Instrument, Vendor or Vendor Contractors 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 Personnel to perform and provide the Services, Deliverables, Application Services, or System(s) hereunder.

12.4.3. Vendor Personnel are not eligible for or otherwise entitled to, and Vendor shall ensure Vendor Personnel never claim they are eligible for or otherwise entitled to, any Agency employee benefits, including retirement benefits, insurance coverage, or the like.

12.4.4. Vendor Personnel shall not be considered employees of the State of Iowa for any purpose, including for federal or Agency tax purposes. The State of Iowa will not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned in connection with its performance of this Agreement.

12.4.5. The Agency shall have no right or authority to direct or control Vendor Personnel with respect to the performance or provisioning of Services or Deliverables under this Agreement, or with respect to any other matter, except as otherwise provided by this Agreement or a Purchasing Instrument. The Agency is interested only in the results to be achieved by Vendor under this Agreement and related Purchasing Instruments. The manner and method of performing and providing Services and Deliverables under this Agreement and related Purchasing Instruments shall be under the exclusive control of Vendor, in accordance with the terms and conditions of this Agreement and the applicable Purchasing Instrument(s).

12.4.6. During any engagement under this Agreement, Vendor 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 this Agreement; (b) adversely affect the performance or provisioning of Services or 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 the Agency; (e) expose the Agency to an increased risk of experiencing a Security Breach or other cyber event.

12.4.7. Vendor and Vendor Contractors shall be free to hire employees as is necessary for their business purposes; provided, that such employees providing or provisioning Services or Deliverables hereunder shall satisfy the terms and conditions of this Agreement and any Purchasing Instrument(s) executed hereunder. The Parties acknowledge and agree that the Agency will not have the authority to hire, fire, supervise, control, or manage any Vendor Personnel.

12.4.8. Vendor Personnel shall not receive performance reviews, vocational training, or business cards from the Agency; shall clearly state in any and all communications related to the performance or provisioning of Services or Deliverables hereunder that they are employees of Vendor or Vendor Contractor, as opposed to employees of the Agency; and shall not be subject to the Agency's standard disciplinary practices and procedures.

12.5. Amendments. This Agreement may be amended, modified, or replaced from time to time by mutual consent of the Agency and Vendor. All amendments to this Agreement must be executed by both Parties in writing.

12.6. No Third Party Beneficiaries. Except as otherwise expressly stated herein, there are no Third Party beneficiaries to this Agreement. This Agreement is intended only to benefit the Agency and Vendor and their respective successors and permitted assigns and the individuals whose Personal Data is stored, transmitted, or otherwise Processed by the Application Services, System(s), and related Deliverables.

12.7. Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the

matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Agency or its officers, directors, employees, officials, and agents, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's designated agent. Vendor appoints [_____] as its agent to receive service of process. If for any reason Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Agency with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Agency. Nothing in this provision will alter the right of the Agency to serve process in any other manner permitted by law. This Section 12.7 (Choice of Law and Forum) shall survive termination of this Agreement.

12.8. Assignment and Delegation. This Agreement may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that the Agency may assign, transfer, or convey this Agreement, in whole or in part, to any Governmental Entity that succeeds its duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale, or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the Agency with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale, or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the Agency. Vendor further agrees that it 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 Vendor under this Agreement.

12.9. Use of Third Parties.

12.9.1. None of the Services, Deliverables, Applications Services, or System(s) to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party, including Vendor Contractors, without the prior written consent of the Agency. Such consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Agency, whether financial or otherwise. Any subcontract to which the Agency has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Agency may deem necessary. Vendor is solely liable for any and all payments

that may be due to Vendor Contractors pursuant to any subcontract. Vendor shall indemnify and hold harmless the Agency and its 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 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 Contractor. In addition, the Agency is not responsible for any failure of any Vendor Contractors to pay any amounts that may be due Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the Services, Deliverables, Application Services, or System(s) performed or provided under this Agreement, the Agency may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in such manner shall not relieve Vendor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow the Agency or its designee to access the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Vendor Contractors. Any action of a Vendor Contractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

12.9.2. Subject to the foregoing, as the date of the execution of this Agreement the Agency expressly consents to Vendor's use of the following Vendor Contractor's for the following purposes:

12.9.2.1. [Insert name of approved Vendor Contractor] for purposes of providing [describe approved Services or Deliverables].

12.10. Integration. This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included in this Agreement. Thus, the Agency shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "browser-wrap" agreement, or "sneakwrap" agreement, or any other similar agreement that may accompany, relate to, or be embedded in any Deliverable(s), the Application Services, or System(s). Vendor acknowledges that it has thoroughly read this Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents that are executed or may be executed hereunder and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept the same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Agency on the basis of draftsmanship or preparation thereof.

12.11. Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Agency and Vendor for the Services, Deliverables, Application Services, or System(s) provided in connection with this Agreement.

12.12. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and Vendor, failure by the Agency or Vendor at any time to require performance by the other Party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the Parties hereto.

12.13. Notices. Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice (identified below) at the address of the Party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the Agency:

_____

_____

_____

_____

If to Vendor:

_____

_____

_____

_____

12.14. Cumulative Rights. The various rights, powers, options, elections, and remedies of the Agency provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies, or priorities allowed by law, and shall in no way affect or impair the right of the Agency to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by the Agency of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.15. Severability. If any provision of this Agreement 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 Agreement.

12.16. Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all Vendor Personnel providing Services and Deliverables hereunder are responsive to the Agency's requirements and requests in all respects, including in accordance with any specific timelines identified in a duly executed Purchasing Instrument.

12.17. Authorization. Vendor represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Vendor, enforceable in accordance with its terms.

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

12.19. Records Retention and Access. Vendor shall maintain books, documents, and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the Term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination, or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the Agency, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt, and transcribe any pertinent books, documents, or other records of Vendor, whether electronic or optically stored, relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require Vendor Contractors to agree to the same provisions as set forth in this Section 12.19 (Records Retention and Access).

12.20. Headings or Captions and Terms. The section headings or captions set forth in this Agreement are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation" or "but not limited to." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

12.21. Multiple Counterparts and Electronic Signatures. This Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents that are executed or may be executed hereunder, including any amendments to any of the foregoing, may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each such document(s) shall constitute an original. Signatures on such documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures, with such scanned and electronic signatures having the same legal effect as original signatures. Such documents may be accepted, executed, or agreed

to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act (**"E-Sign Act"**), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act, codified at Iowa Code chapter 554D (**"UETA"**), or any other applicable state law, rule, policy, standard, directive, or order. Any document accepted, executed, or agreed to in conformity with such laws, rules, policies, standards, directives, or orders will be binding on the signing Party as if it were physically executed. Vendor acknowledges and agrees it will not contest the validity or enforceability of any such document(s), including under any applicable statute of frauds, because they were accepted, signed, or transmitted in electronic form. Vendor further acknowledges and agrees that it will not contest the validity or enforceability of a signed scanned or facsimile copy of any such document(s) on the basis that it lacks an original handwritten signature, or on the basis that the Parties were not signatories to the same counterpart.

12.22. Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.

12.23. Attachments. The Parties agree that if an Addendum, Attachment, Rider, Schedule, Appendix, or Exhibit is attached hereto by the Parties, and referred to herein, then the same shall be deemed incorporated herein by reference as if fully set forth herein.

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

12.25. Obligations of Joint Entities. If Vendor 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 Agreement, and for any default of such activities and obligations.

12.26. Force Majeure. Neither Party shall be in default under this Agreement 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 Agreement 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 catastrophic events or 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 Vendor or Vendor Contractors; claims or court orders that restrict Vendor's or Vendor Contractor's ability to perform or deliver the Services, Deliverables, Application Services, or System(s) contemplated by this Agreement; strikes; labor unrest; supply chain disruptions; internet failure; power failures; hacker attacks; denial of service attacks; virus or other malicious software attacks or infections; or Security Breach. If delay results from a Vendor Contractor's conduct, negligence, or failure to perform, Vendor shall not be excused from compliance with the terms and obligations of Vendor unless the Vendor Contractor is prevented from timely

performance by a "force majeure" as defined in this Agreement. If a "force majeure" delays or prevents Vendor's performance, Vendor 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 Vendor's 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.

12.27. Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

12.28. Right of Inspection/Contract Compliance. Vendor shall allow the Agency making purchases or its designee to inspect Vendor's books and records at reasonable times in order to monitor and evaluate performance of this Agreement. All subcontracts shall contain provisions which allow the same. In addition, Vendor agrees that the Agency or its designee may conduct a complete contract compliance audit at least once annually during the Term of this Agreement and after termination or expiration of this Agreement to determine whether or not Vendor is complying with the terms of this Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations requested by the Agency or its designee. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

12.29. Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Agency is exempt from the payment of Agency sales and other taxes: https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf.

12.30. Title to Property. Title to all property, including Customer Property, furnished by the Agency to Vendor to facilitate the performance of this Agreement and any Customer-Owned Deliverables shall remain the sole property of the Agency or applicable Third Party owning Customer Property that has been licensed to the Agency. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Agency upon the earliest of completion, termination, or cancellation of this Agreement or the applicable Purchasing Instrument, or at the Agency's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided for in this Agreement, Vendor shall not disclose or use such property for any of the following purposes, including pledging or encumbering it; selling or using it for monetary gain; using it to compile mailing lists; solicit business; or pursue other business activities. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Agency under this Agreement, or for Customer Property or Customer-Owned Deliverables purchased and paid for by the Agency under this Agreement, shall pass to and vest in the Agency.

12.31. Exclusivity. This Agreement is not exclusive. The Agency may obtain similar or identical Services, Deliverables, Application Services, or System(s) from other vendors.

12.32. Award of Related Agreements. The Agency may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with Authorized Contractors who may be engaged by the Agency in connection with this Agreement, including complying with any license terms, conditions, or restrictions imposed by such Authorized Contractors in connection with any systems, software, or other intellectual property owned by or licensed by or through such Authorized Contractors and to which Vendor, Vendor Contractors, or Vendor Personnel must use or access or with which the Application Services, System(s), or related Deliverables must interface, integrate, or connect. Any reference herein to the Agency's designee or other like reference shall be deemed to include its Authorized Contractors. Vendor will ensure that any Vendor Contractors or Vendor Personnel will abide by this provision.

12.33. Sovereign Immunity. The Agency, on its own behalf or on behalf of any of its officers, directors, employees, officials, and agents, does not waive sovereign immunity or any other immunity available to it by entering into this Agreement and specifically retains and reserves the defense of sovereign immunity or any other immunity and all defenses available under Agency and federal laws, rules, and regulations for any claim arising out of or related to this Agreement.

12.34. Attorney's Fees and Expenses. In the event Vendor defaults on any of its obligations under this Agreement, Vendor shall pay to the Agency all costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses, and attorney fees of other counsel retained by or on behalf of the Agency) incurred by the Agency in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.35. Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, and intellectual property, including Customer Property, furnished by the Agency for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the Agency's request, restore damaged property to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Agency. In addition, at the Agency's request, Vendor will reimburse the Agency for any loss or damage to such property caused by Vendor, Vendor Contractors, or Vendor Personnel. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property, and intellectual property rights of the Agency or State of Iowa.

12.36. Survives Termination. This Section 12 (General Provisions) shall survive termination or expiration of the Agreement.

SPECIAL TERMS AND CONDITIONS/ANCILLARY AGREEMENT #001

The following Special Terms and Conditions/Ancillary Agreement are part of and incorporated into the [Title of Agreement], Agreement No. [_____], (**"Agreement"**) between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer (**"Agency"**), and _____, a corporation organized under the laws of _____ (**"Vendor"**). Capitalized terms used but not defined herein are as defined in the Agreement. Other terms used but not defined in herein, whether capitalized or lowercase, are as defined in Pub 1075 to the extent Pub 1075 defines such terms. This Special Terms and Conditions/Ancillary Agreement shall be in addition to any more favorable, protective, or restrictive terms set forth in the Agreement.

Iowa Department of Revenue
Confidential Information Requirements for Contractors

I. Access to Confidential Information. Vendor, Vendor Personnel, and Vendor Contractors may have access to confidential federal or state tax information, including returns and return information (herein referred to collectively as "Tax Information") maintained by the State to the extent necessary to carry out its responsibilities under the Agreement. Vendor, Vendor Personnel, and Vendor Contractors shall presume that all information received pursuant to the Agreement is confidential unless otherwise designated by the Agency.

II. Performance. In performance of the Agreement, Vendor agrees to comply with and assume responsibility for compliance by Vendor Personnel and Vendor Contractors with the following requirements:

1. All work shall be performed under the supervision of Vendor or Vendor Personnel.
    - i. Vendor shall designate one individual who shall remain the responsible authority in charge of all Tax Information collected, used, or disseminated by Vendor, Vendor Personnel, or Vendor Contractors in connection with the performance of its duties under the Agreement.
    - ii. Vendor shall provide adequate supervision and training to Vendor Personnel and Vendor Contractors to ensure compliance with the terms of the Contract. Annual training shall include, but is not limited to, the IRS video "Protecting Tax Information".
    - iii. Vendor shall provide acceptance by Vendor Personnel and Vendor Contractors, by signature, of the terms of federal and state confidentiality disclosure (see Exhibit 1 Acknowledgment of Statements of Confidentiality).
    - iv. Vendor shall provide to the Agency a written description of its policies and procedures to safeguard Tax Information. Policies of confidentiality shall address, as appropriate, Tax Information conveyed in verbal, written, and electronic formats.
    - v. Vendor shall maintain a Vendor Personnel and Vendor Contractors with authorized access to Tax Information. Such list shall be provided to the Agency and, when Federal Tax Information (FTI) is involved, to the Internal Revenue Service (IRS) reviewing office, upon request.
    - vi. Vendor, Vendor Personnel, and Vendor Contractors with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
    - vii. No work furnished under this Agreement may be subcontracted without prior written approval from the Agency. If the work involves FTI, prior written approval shall also be received from the IRS. If written approval is received, all subcontractors and subcontractor's employees shall be held to the same standards

as the Vendor, including, but not limited to, annual training and acceptance of confidentiality disclosure.

viii. No Tax Information may be accessed by Vendor, Vendor Personnel, or Vendor Contractors located offshore or via any information systems located offshore.

ix. Vendor shall complete a security risk assessment questionnaire annually, as part of a certification process with the Agency.

2. Any Tax Information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. All such Tax Information, and the contents thereof, shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure of Tax Information to anyone other than authorized Vendor, Vendor Personnel, or Vendor Contractors of the contractor is prohibited.
3. All Tax Information shall be accounted for upon receipt and properly safeguarded in accordance with security requirements set forth in this Special Terms and Conditions/Ancillary Agreement and IRS Publication 1075 before, during, and after Processing. In addition, all related output shall be given the same level of protection as required for the source material.
4. Upon completion of duties under this Agreement or upon the specific direction of the Agency, Vendor, Vendor Personnel, and Vendor Contractors shall certify that the Tax Information Processed and any output generated during the performance of duties under this Agreement has been completely purged from all information storage components, including, but not limited to data center facility, laptops, computers, and other storage devices. If immediate purging of all information storage components is not possible, Vendor shall certify that any Tax Information remaining in any storage component shall be safeguarded to prevent unauthorized disclosures until it has been purged. Once all Tax Information processed and output generated has been completely purged, the contractor shall submit a signed certification to the Agency to that effect.
5. Any spoilage or intermediate hard copy output that may result during the Processing of Tax Information shall be given to the Agency. When this is not possible, Vendor, Vendor Personnel, or Vendor Contractors shall be responsible for the destruction of the spoilage or intermediate hard copy printouts, and shall provide the Agency with a statement containing the date of destruction, description of material destroyed, and the method used. Destruction method must meet specifications as defined in IRS Publication 1075 Section 8.3.
6. Vendor shall ensure that all computer systems Processing, storing, or transmitting Tax Information meet computer system security requirements defined in IRS Publication 1075 Section 9.1. The security features of the computer systems shall meet all functional and assurance requirements for the managerial, operational, and technical security controls. All security features shall be available and activated to protect against unauthorized use of and access to Tax Information.
7. The use of personally owned computers for accessing Tax Information is strictly prohibited.
8. Any Tax Information supplied by the Agency to Vendor, Vendor Personnel, or Vendor Contractors or created by the Vendor, Vendor Personnel, or Vendor Contractors in the course of the performance of its duties under this Agreement shall be considered the property of the Agency. No Tax Information Processed, collected, maintained, or used in the course of performance of the Agreement shall be disseminated by Vendor, Vendor Personnel, or Vendor Contractors except as authorized by law and only with the prior written consent of the Agency, and, if FTI is involved, the IRS, either during the period of the Agreement or thereafter. Vendor, Vendor Personnel, or Vendor Contractors may

be liable for an unauthorized disclosure if it fails to comply with federal and state confidential safeguard requirements.

9. In the event that a subpoena or other legal process is served upon Vendor, Vendor Personnel, or Vendor Contractors for records containing Tax Information, Vendor, Vendor Personnel, or Vendor Contractors shall promptly notify the Agency and cooperate with the Agency and the IRS in any lawful effort to protect the Tax Information.
10. Vendor, Vendor Personnel, and Vendor Contractors shall immediately report to the Agency any unauthorized disclosure or security breach of Tax Information. This includes, but is not limited to: (i) Unauthorized access or disclosure of Tax Information; (ii) Illegal technology transfer; (iii) Sabotage, destruction, theft, or loss of Tax Information or information systems, and (iv) Compromise or denial of Tax Information or information systems.
11. The Agency and the IRS, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of Vendor or Vendor Contractors for inspection of the facilities and operations performing any work with Tax Information under this Agreement, for compliance with requirements defined in this Addendum and IRS Publication 1075. The Department and the IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process, or transmit tax information. An inspection questionnaire may be used in lieu of an on-site visit at the discretion of the IRS or the Department. Based on such inspection, specific actions may be required of the contractor in cases where the contractor is found to be noncompliant with Special Terms and Conditions/Ancillary Agreement #001 or IRS Pub 1075 safeguards.
12. If the Agency is required to notify taxpayers of a security or confidentiality breach caused by Vendor, Vendor Personnel, or Vendor Contractors, the Agency is entitled to reimbursement of such costs related to this notification from the Vendor (see Iowa Code section 715C.2).
13. If Vendor, Vendor Personnel, or Vendor Contractors fails to provide the safeguards described in this Special Terms and Conditions/Ancillary Agreement #001 or IRS Pub 1075, the Agency shall have the right to void the Agreement immediately.
14. Vendor's, Vendor Personnel's, or Vendor Contractors's confidentiality obligations under this section shall survive the termination of this Agreement.
15. Any disclosure of FTI shall be subject to penalties prescribed by Internal Revenue Code ("IRC") sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1. Any disclosure of state Tax Information as governed by the Iowa Code sections 422.20, 422.72, and 452A.63, shall be subject to penalties prescribed therein.

III. Criminal/Civil Sanctions for Disclosure of FTI.

1. All Vendor Personnel and Vendor Contractors to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such Vendor Personnel or Vendor Contractor may be used only for the purpose of carrying out the provisions of the Agreement, and to the extent authorized herein. Further disclosure of any FTI for any other purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of up to and including $5,000, imprisonment for up to and including 5 years, or both, together with the costs of prosecution. These penalties are prescribed by IRC sections 7213 and 26 CFR 301.6103(n)-1.
2. All Vendor Personnel and Vendor Contractors to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such Vendor Personnel or Vendor Contractor may be used only for the purpose of carrying out the provisions of the Agreement, and to the extent authorized herein. Tax Information contained in such material shall be treated

as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by or disclosure to any unauthorized person constitutes a criminal misdemeanor punishable upon conviction by a fine of up to and including $1,000, imprisonment for as long as 1 year, or both, together with the costs of prosecution. The penalties are prescribed by IRC section 7213A and 26 CFR 301.6103(n)-1.

3. All Vendor Personnel and Vendor Contractors to whom FTI is or may be disclosed shall be notified in writing that any unauthorized inspection of FTI may result in an award of civil damages against the Vendor, Vendor Personnel, or Vendor Contractor in an amount equal to the sum of the greater of $1,000 for each act of unauthorized inspection with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection plus, plus the costs of the action. In the case of a willful inspection that is the result of gross negligence, the defendant may also be liable for punitive damages. The penalties are prescribed by IRC section 7431 and 26 CFR 301.6103(n)-1.
4. Additionally, it is incumbent upon Vendor to inform Vendor Personnel and Vendor Contractors of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any employee of a contractor, who by virtue of such employment or official position, has possession of or access to Agency records which contain FTI, the disclosure of which is prohibited by the Privacy Act and regulations established thereunder, and who knowing that disclosure of such material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.
5. Granting Vendor, Vendor Personnel or Vendor Contractors access to FTI shall be preceded by certifying that each individual understands the Agency's security policy and procedures for safeguarding FTI. Vendor, Vendor Personnel, and Vendor Contractors must maintain authorization to access FTI through annual recertification. The initial certification and each recertification must be documented and placed in the Agency's files for review. As part of the initial certification and at least annually thereafter, Vendor, Vendor Personnel, and Vendor Contractors shall be advised of the provisions of IRC sections 7213, 7213A, and 7431. The training provided before the initial certification and annually thereafter shall cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (see Publication 1075 Section 10). For both the initial certification and each annual certification, Vendor, Vendor Personnel, and Vendor Contractors shall sign, with either ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute these Special Terms and Conditions, which are effective as of the date of last signature below.

Iowa Office of the Chief Information Officer (**"Agency"**)		**[Name of Vendor]** (**"Vendor"**)	
By:		By:	
Name:		Name:	
Title:		Title:	

Date:		Date:	

Form

Exhibit 1 —Acknowledgment of Statement of Confidentiality

Authorization to access tax information is limited to the extent necessary to perform duties under the Contract with the Iowa Department of Revenue (the Department). Do not access, research, review, or change your own records. Do not access, research, review, or change the records of a relative, friend, neighbor, co-worker, celebrity, well-known taxpayer, or any other taxpayer, unless authorized to do so as part of your official duties. Disclosing or accessing tax information, even your own, without authorization may result in immediate termination of the Contract with the Department, as well as other criminal and civil penalties.

Confidential Information: It is the policy of the Department that all information should be treated as confidential, unless specifically authorized by statute, rule, or regulation. Tax information consists of both state and federal, as well as personal data and personal information that is created, collected, handled, stored, processed, disseminated, and disposed of by the Department (hereinafter, collectively "confidential information").

Policy Statement: The contractor's officers, employees, agents, and subcontractors are strictly prohibited from accessing or disclosing any confidential information without a legitimate business purpose. The contractor's officers, employees, agents, and subcontractors are expressly prohibited from accessing their own confidential information. Records of family members, relatives, friends, neighbors, ex-spouses, acquaintances, or anyone else where a reasonable person would believe there may be a conflict of interest or where a personal relationship or an outside business relationship could raise questions about impartiality in handling of a related tax matter should not be accessed unless there is a business purpose. This includes any confidential information accessed or disclosed while performing official duties and training, demonstration, or troubleshooting needs.

If the contractor's officers, employees, agents, or subcontractors has a business purpose to access records that could cause potential conflict of interest, the officer, employee, agent, or subcontractor should notify their supervisor prior to accessing the record.

Scope: This policy applies, but is not limited to, the proper use and disclosure of confidential information. The appropriate use of Departmental records is the responsibility of all Departmental resource users, including full-time, part-time, and temporary employees, contractors, vendors, and other non-employees, who have access to Departmental resources or are in a position to impact the security or integrity of information assets of the Department.

Penalties & Enforcement: The contractor's officers, employees, agents, and subcontractors may be monitored for compliance with this policy. Non-compliance may result in disciplinary action up to and including termination of the Contract. Criminal and/or civil action against the officer, employee, agent, or subcontractor may be appropriate where laws are violated.

Release of Federal Tax Information: Pursuant to the agreement between the State of Iowa and the IRS, I, the undersigned, realize that information provided to the Iowa Department of Revenue by the Department of Treasury is confidential in nature. I am also aware that the following is punishable:
1) The willful inspection (browsing) of information without authorization, or
2) The willful release of such information to persons other than that intended by Iowa Department of Revenue policy and procedures.

Federal Penalties for unauthorized disclosure and/or inspection of confidential information includes:

- Internal Revenue Code section 7213 – Felony, up to $5,000 fine, imprisonment up to five years, cost of prosecution.
- Internal Revenue Code section 7213A – Misdemeanor, up to $1,000 fine, imprisonment up to one year, cost of prosecution.
- Internal Revenue Code section 7431 - Damages may include $1,000 per act, actual damages, punitive damages, cost of legal action, attorney fees.

Release of Confidential Departmental Information: Pursuant to the Iowa Code, I, the undersigned, understand that the willful release of confidential information in a manner inconsistent with Iowa law is punishable as set forth below. I also understand that the willful inspection (browsing) of tax records is a violation of Iowa law.

State Penalties for willful browsing and unauthorized disclosure of confidential information includes:

- Iowa Code sections 422.20, 72 – Misdemeanor, up to $1,876 fine, imprisonment up to one year, loss of job, potential of personal liability in a lawsuit brought by the affected taxpayer.

I acknowledge that I am expected to:

- Be knowledgeable on the above policies and penalties;
- Speak with my supervisor if I have questions or need clarification; and
- Notify my supervisor immediately if I become aware of a possible compromise of confidential information.

Print Name		Signature		Date		IDR Division / Company Name

- CONTACT IDRDISCLOSURE@IOWA.GOV FOR INFORMATION OR ASSISTANCE WITH THIS FORM.

SPECIAL TERMS AND CONDITIONS #002
Application Services/System(s) Description and related Fees

The following Special Terms and Conditions are part of and incorporated into the [Title of Agreement], Agreement No. [_____], (**"Agreement"**) between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer (**"Agency"**), and _____, a corporation organized under the laws of _____ (**"Vendor"**). This Special Terms and Conditions identifies, defines, and describes the Application Services and System(s) to be provided by Vendor. Capitalized terms used but not defined herein are as defined in the Agreement. Services and Deliverables and related fees other than the Application Services and System(s) and related fees identified herein should be identified, described, and documented in a Purchasing Instrument separate from these Special Terms and Conditions.

1. **Application Services and System(s).** The term "Application Services" and "System" as used in the Agreement shall mean the following Vendor-hosted system software and services:

   1.1. [**Vendor:** List and describe solution components/software].

   1.2. [**Vendor:** List and describe solution components/software].

   1.3. [**Vendor:** List and describe solution components/software].

   1.4. [**Vendor:** List and describe solution components/software].

2. **Application Service and System Fees (including Support Service Fees)**:

   2.1. Application Service and System(s) Fees prior to Go-Live. The Parties agree that the State shall not be charged or responsible for the payment of any fees for the Application Services or System(s) until after **"Go Live,"** meaning on the later of the date: (a) on which the Agency provides Vendor with written notice of Final Acceptance of the initial implementation, configuration, and transition to the Application Services or System(s); or (b) the date on which the Application Services and System(s) goes live into production; provided, however, if it is necessary for the Agency or its Authorized Contractors to receive, hold, possess, or own either all or a portion of the licenses granted pursuant to Section 3.2.1 (Grant of License) of the Agreement for any reason prior to Go Live, Vendor shall grant, supply, or otherwise obtain the Agency and its Authorized Contractors to or with the necessary license(s) during any such period at no charge to the Agency.

   2.2.2 Subscription Fees after Go-Live.

Application Services/System (s)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total
	$X,XXX	$X,XXX	$X,XXX	$X,XXX	$X,XXX	$X,XXX	$X,XXX
	$X,XXX	$X,XXX	$X,XXX	$X,XXX	$X,XXX	$X,XXX	$X,XXX
	$X,XXX	$X,XXX	$X,XXX	$X,XXX	$X,XXX	$X,XXX	$X,XXX
Total	**$X,XXX**	**$X,XXX**	**$X,XXX**	**$X,XXX**	**$X,XXX**	**$X,XXX**	**$X,XXX**

[**Vendor**: Please Describe the Application Service and System(s) fees over the Term of the Agreement after Go-Live. The above-table is for example purposes only.]

3. **Third Party Software; Third Party Intellectual Property.**

3.1. [**Vendor:** Please describe any Third Party Software. Please attach any Third Party license terms or conditions to your Proposal that you are required to flow down and that you may ask the Agency to agree to as part of any proposed solution.]

4. Other Third Party Intellectual Property.

4.1. [**Vendor:** Please describe any other Third Party Intellectual Property. Please attach any Third Party license terms or conditions to your Proposal that you are required to flow down and that you may ask the Agency to agree to as part of any proposed solution.]

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute these Special Terms and Conditions, which are effective as of the date of last signature below.

Iowa Office of the Chief Information Officer (“Agency”)		**[Name of Vendor] (“Vendor”)**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

- **SAMPLE PURCHASING INSTRUMENT/STATEMENT OF WORK**

Please Read: Instructions/guidance for using this template to draft a Statement of Work are in red italics. Delete all such instructions after the appropriate text has been added to the Statement of Work. This is only a sample, thus, not all of the sections set forth below may be applicable, depending on the project/circumstances.

- **PURCHASING INSTRUMENT/STATEMENT OF WORK**

The following Purchasing Instrument/Statement of Work (**"SOW"**) is executed under and pursuant to [Title of Agreement], Contact No. _____, (**"Agreement"**) between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer (**"Agency"**), and _____, a corporation organized under the laws of _____ (**"Vendor"**). This Purchasing Instrument is effective as of the date of last signature below (**"Effective Date"**). Capitalized terms used but not defined herein are as defined in the Agreement.

1. Executive Summary/Project Scope. Provide a high-level summary of the project, Services, or Deliverables to be provided pursuant to this SOW and the scope of the project, including, for example:

1.1 A general description of/nature/function of the project, Services, Deliverables;

1.2 High-level overview of process for implementing, configuring, or installing the Deliverables, or transitioning to the new Application Services/System(s).

2. Specifics.

2.1 Solution Components. List the solution components (including Value-Added Services, *e.g.*, equipment, hardware, Software, etc.) provided by Vendor that will be used to support the requirements. Identify any special configuration requirements, and describe how such equipment, hardware, or Software will integrate with the Agency's infrastructure.

2.2 Deliverables. Identify and describe in detail specific Deliverables the Agency intends Vendor to deliver.

2.3 Customer-Owned Deliverables. Identify specific Deliverables the Agency intends to own, and which will be considered Customer-Owned Deliverables under the Agreement: [It is very important to identify, if any, which Deliverables the Agency intends to own to avoid future disputes related to ownership.]

2.4 Source Code. Vendor shall develop and deliver all Source Code for the following Deliverables or Software: [List any Source Code the receipt of which is expected].

2.5 Services. Provide information on the Services (*e.g.*, requirements development, solution design, configuration, installation) that will be provided by Vendor, and a description of the methodology Vendor will use to accomplish the work.

2.6 Training and Knowledge Transfer. Provide an overview of training services to be provided by Vendor and any special requirements for specific knowledge transfer to support the Agency's successful implementation and use of the Deliverables, Application Services, or System(s). If the intent is for the Agency's personnel to become self-sufficient in operating or maintaining the solution, determine the type of training necessary, and develop a training plan, for such user self-sufficiency.

2.7 Support. Document the level of ongoing support, required from Vendor to effectively make use of any Deliverables. This may include conversion support, legacy system integration, transition assistance, solution maintenance (including maintenance level), or

other specialized consulting to facilitate delivery or use of the solution. [Note: Support obligations may be addressed in a separate Service Level Agreement attached to the Agreement as Special Terms and Conditions, in which case duplication in this Section is not necessary].

2.8 Documentation. Vendor shall provide all Documentation required for the Agency and its personnel to make use of the Deliverables, including: [List any specific Documentation needed to utilize the Deliverables, Application Services, or System(s)].

2.9 Location. Identify where the Services will be performed, i.e., at the Agency's facilities or remotely.

3. Milestones, Payment Schedule, Retained Amount(s), Performance Measures, Compensation. The following table identifies key milestone events and Deliverables, associated schedules/timelines, associated payments, any Retained Amounts, and applicable Performance Standards. All Deliverables as defined below shall be subject to the Acceptance Testing process set forth in the Agreement. To secure Vendor's performance under this SOW, the Agency may retain the amount specified the table below in the **"Retained Amounts"** column until any performance deficiencies experienced have been remediated, or until all Deliverables or milestones under this SOW have been fully performed or delivered and the Agency's delivery of written notice of Final Acceptance has been tendered. In addition, subject to any assumptions noted below, failure of Vendor to meet the deadlines/timelines listed in the **"Schedule"** column below shall result in Vendor being liable to the Agency for the amount specified in the **"Performance Standards"** column. The following is intended solely for purposes of example.

#	Milestone	Deliverable(s)	Schedule	Total Payment	Retained Amounts	Net Payment	Performance Standards
1	Project Kick-Off Meeting	--	Effective Date + 5 days	$--	$--	--	
2	Site Survey	Project Plan	Effective Date + 10 days	$10,000	$1,000	$9,000	
3	Installation of Software	--	Effective Date + 15 days	$--	$--	$--	$1,000
4	Configuration and Vendor testing	Testing results	Effective Date + 20 days	$10,000	$1,000	$9,000	$1,000
5	Training	Training Manual	Effective Date + 30 days	$20,000	$2,000	$18,000	$1,000
6	Agency's Acceptance Testing	--	Effective Date + 30 days	$--	$--	$--	
7	Project		Effective	$10,000	($4,000)	$14,000	$2,000

	Completion		Date + 45 days				
			Total	$50,000		$50,000	

Alternate example where Services under SOW are consumed on an hourly basis, such as optional/consulting services elicited by the RFP. In the case of hourly fees for optional services Vendor must obtain prior written permission from the Agency before going over the Estimated/Quoted number of hours identified in the table below. Vendor will be entitled to no payment for any hours claimed in excess of the estimated/quoted hours without the Agency's prior written permission.

Services Category	Hourly Rate	Estimated/Quoted Number of Hours	Estimated/Quoted Total Fee
Consulting Services	$200	100	$20,000
Deployment Services	$215	60	$12,900
Out-sourced Programs	$220	200	$44,000
Maintenance Services	$150	20	$30,000
Other Services	$100	50	$5,000
Total			**$111,900**

Example where Services under SOW are accompanied by related goods. Note: could also be purchased as part of a separate purchase order. Vendor will provide to the Agency the following goods or equipment under the Agreement, in accordance with the following [Insert special conditions]:

- Equipment must be delivered by X date;
- Equipment must be shipped to the following location: [address].

Equipment Description	SKU	Quantity	Price Per Unity	Total Price
PCs, brand, make model	XXXXX	100	$500	$50,000
Servers, brand, make, model	XXXXX	3	$10,000	$30,000
Total				**$80,000**

4. **Project Plan**. The foregoing Deliverables and Milestones will be implemented pursuant to and in accordance with a more detailed project plan to be agreed by the Parties (**"Project Plan"**), which Project Plan will be consistent with the requirements of the RFP and any representations made in the Proposal, and which Project Plan, once finalized, is incorporated into this SOW and thereby the Agreement by reference as if full set forth herein and therein. The initial Project Plan for this implementation will be agreed by the Parties in accordance with the Schedule set forth in Section 3 (Milestones, Payment Schedule, Retained Amount(s), Performance Measures, Compensation), above.

5. **Agency Responsibilities.** The following is solely for purposes of example.

5.1 The Agency shall commit staff and resources necessary for successful execution of this SOW.

5.2 The Agency shall make personnel available to discuss and provide the necessary information required for Vendor to perform/provide the Deliverables, Application Services, or System(s) to perform testing, and to define delivery protocols for data feeds.

5.3 The Agency shall determine, define, and execute communication and reporting protocols related to this SOW.

5.4 The Agency shall identify applicable training requirements.

6. **Assumptions.** List any assumptions here.

7. **Security.** Document (and subsequently provide to Vendor) any additional security requirements over-and-above the standard security requirements required by the Agreement or related Special Terms and Conditions/Ancillary Agreements, including any the Agency's then-current security policies, standards, procedures, or exceptions that apply to the project.

8. **Dispute Resolution/Performance Monitoring.** In addition to any terms or conditions in the Agreement related to dispute resolution/performance monitoring, it is the intent of the Parties that any disputes or issues arising related to performance under this SOW shall be communicated to the appropriate Project Manager. Vendor shall be solely responsible for addressing any disputes or performance issues with any Vendor Personnel or resources made available through Vendor or Vendor Contractors, directly or indirectly, under the Agreement and this SOW and for ensuring adequate performance/provisioning of Deliverables hereunder and successful completion of this project. In the event of a dispute or performance issues, the Parties shall discuss the matter in good faith and escalate the issue, as appropriate, within their respective organizations. Except with regard to actions for equitable relief, the Parties shall attempt to resolve all disputes informally for a period of not-less-than ten (10) days before instituting any legal proceedings in a court of competent jurisdiction.

9. **Contacts.** The following shall be the Parties' primary contacts for this SOW and, unless otherwise set forth herein, the Project Manager(s):

Vendor Representative: _____
Address: _____
_____
_____
Telephone number: _____
Fax number: _____
Email address: _____

Representative of the Agency: _____
Address: _____
_____
_____
Telephone number: _____
Fax number: _____
Email address: _____

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute this Purchasing Instrument, which is effective as of the date of last signature below.

Iowa Office of the Chief Information Officer (“Agency”)		**[Name of Vendor] (“Vendor”)**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

4

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5 Special Terms and Conditions #00X
6 Service Levels ("SLA")

The following Special Terms and Conditions are part of and incorporated into the [Title of Agreement], Agreement No. [_____], (**"Agreement"**) between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer (**"Agency"**), and _____, a corporation organized under the laws of _____ (**"Vendor"**). Capitalized terms used but not defined herein are as defined in the Agreement.

1. **Overview.** These Special Terms and Conditions set forth certain performance standards and service levels to be achieved by Vendor in providing the Applications Services, System(s), and related Deliverables to the Agency.

2. **Definitions.** Except as provided in this exhibit, capitalized terms used but not defined herein are as defined in the Agreement. The following terms, when used in this Exhibit, shall have the following meanings:

2.1. "**Available**" means the Application Services and System(s) shall:

2.1.1. Be capable of being utilized or accessed over the Internet by State Users, their Authorized Contractors, and Users as contemplated under the Agreement, RFP, and the Proposal, including in accordance with any Specifications, without Error or Deficiency, and without material degradation of performance; and

2.1.2. Provide the functionality required under the Agreement and applicable Purchasing Instruments.

2.2. "**Downtime**" means the aggregate duration of Outages for the Application Services, System(s), and related Deliverables (or any portion thereof) during a calendar month, excluding Scheduled Downtime.

2.3. "**Download Time**" means the average time to download or execute any page, screen, or other system response related to the Application Services, System(s), or related Deliverables, including all content contained therein or related thereto. Download time shall be measured using a Vendor-supplied program, and by clock, and shall be measured to the nearest one-tenth of a second for each page, commencing from the operative input from the user, whether by keyboard, mouse click, or any other input device.

2.4. **"KB40"** means the Keynote Business 40 Internet Performance Index. In the event KB40 is discontinued, a successor index (such as average download times for all other customers of the Vendor) may be mutually agreed upon by the Parties.

2.5. "**Normal Business Hours**" means 7:00 a.m. to 5:00 p.m. CST/CDT, Monday through Friday.

2.6. "**Outage**" means any time during which the Application Services, System(s), and related Deliverables (or any portion thereof) is not Available within calendar month, measured from the earliest point in time that such Outage is or reasonably should be detected by Vendor, Vendor Contractors, or Vendor Personnel, but in any event no later than the time the Outage actually occurred.

2.7. **"Scheduled Downtime"** means scheduled maintenance Outages communicated to and agreed to by the Agency at least twenty-four (24) hours in advance, which Outages shall last no longer than is reasonably necessary to address the applicable maintenance need. Scheduled downtime must be scheduled outside of Normal Business Hours.

2.8. "**Server(s)**" shall mean the server(s) on which the Application Services, System(s), and related Deliverables are hosted.

2.9. **"Support Request(s)"** means a request by the Agency to Vendor related to the Application Services, Systems(s), or related Deliverables being Unavailable.

2.10. **"Support Request Classification"** means the level of a Support Request based on the severity or seriousness of the Error, Deficiency, or issue leading to the Support Request. Support Requests shall be classified as follows:

2.10.1. **Level 1 Critical:** Any Error, Deficiency, or issue causing the Application Services, System(s), or related Deliverables (or any portion thereof) to be Unavailable in a manner that affects a vast majority State Users or Users.

2.10.2. **Level 2 Major:** Any Error, Deficiency, or issue causing the Application Services, System(s), or related Deliverables (or any portion thereof) to be Unavailable in a manner that affects a substantial number of State Users or Users.

2.10.3. **Level 3 Important:** Any Error, Deficiency, or issue causing the Application Services, System(s), or related Deliverables (or any portion thereof) to be Unavailable in a manner that affects a material number of State Users or Users. For example, when a minor defect is reported.

2.10.4. **Level 4 Minor:** A minor Error, Deficiency, or issue not covered in levels 1–3, above.

2.11. "Unavailable" means the Application Services and Systems are not Available, as such term is defined in 2.1 of this exhibit.

2.12. **"Uptime"** any time that is not Downtime. Uptime includes both: (a) "**Critical Hours**," meaning hours occurring during Normal Business Hours; and (b) **"Non-Critical Hours,"** meaning hours occurring outside of Normal Business Hours.

3. Service Levels.

3.1. Support Requests. The Agency may make Support Requests via a Vendor-specified telephone number, email address, or other Vendor-provided mechanism, which shall be available during Normal Business Hours. Vendor shall respond to, follow up on, and resolve Support Requests in accordance with the following performance standards and service levels.

3.1.1. *Support response times*. Following the receipt of a Support Request, Vendor shall provide an initial response for the Support Request based on the Support Request Classification within the corresponding timeframe set forth in the table below.

Title	Performance Level		Measurement Period
Support Response Times* *Response times reflect responses within Normal Business Hours. If a ticket is	Level 1	30 minutes	From initial request
	Level 2	3 hours	
	Level 3	6 hours	

submitted before or after Normal Business Hours, the performance level requirement will begin at the next Normal Business Hour.	Level 4	8 hours	

3.1.2. *Support Status Update*. Following the receipt of a Support Request and Vendor's initial response thereto, Vendor shall provide a status update for the Support Request based on the Support Request Classification, within the corresponding timeframe set forth in the table below.

Title	Performance Level		Measurement Period
Support Status Update	Level 1	Every hour	From initial response
	Level 2	Every two (2) hours	
	Level 3	Once every other day	
	Level 4	Once each week	

3.2. Uptime/Availability. The Application Services, System(s), and related Deliverables will be Available:

3.2.1. 99.9% during Critical Hours, excluding Scheduled Downtime; and

3.2.2. 99% during Non-Critical Hours, excluding Scheduled Downtime.

Vendor shall be solely responsible all Downtime in accordance with the service levels identified above, excluding Scheduled Downtime, including if such Downtime was caused, in whole or in part, by Vendor Contractor(s) or Vendor Personnel.

3.3. Download Time. Vendor represents, warrants, and covenants that the Download Time for a page, screen, or other system response of or related to the Application Services, System(s), or any related Deliverables shall be:

Title	Performance Level		Measurement Period
Download Time	During Critical Hours	At a maximum, the lesser of (a) 0.5 seconds above the KB40, or (b) three (3) seconds	Each operative input from the user, whether by keyboard, mouse click, or any other input device.
	During non-Critical Hours	At a maximum, the lesser of (a) 0.8 seconds above the KB40, or (b) five (5) seconds	

3.3.1. Vendor shall be responsible all Download Times in accordance with the service levels identified above, including if the failure to meet the required Download Time performance level was caused, in whole or in part, by Vendor Contractor(s) or Vendor Personnel.

3.3.2. Vendor shall be responsible for all Download Times in accordance with the

service levels identified above, based on the assumption that the Agency, State Users, or Users may have relatively slow internet connection speeds, including as low as twenty (20) megabits per second of download speed.

3.3.3. Tests of Download Times shall be conducted by Vendor over any two (2) hour period during Critical Hours every ten (10) business day(s) using a representative number of logged-on computers or terminals for the selected two (2) hour period and running a representative sampling of applications then being accessed or used.

4. Reporting/Audits.

4.1. Reporting. Vendor shall track and report monthly to the Agency regarding its satisfaction of the service levels and performance measures established in Section 3 (Service Levels), above. Such report shall include metrics specifying Vendors response time in relation to Support Requests, its follow-up time in relation to Status Updates, the Availability of the Application Services, System(s), and related Deliverables during Critical Hours and Non-Critical Hours, and Download Times of the Application Services, System(s), and related Deliverables. Vendor further agrees to provide, at no cost to the Agency, measurement tools capable of directly making all measurements necessary to verify any and all Service Level(s) identified in Section 3 (Service Levels).

4.2. Audits. The Agency or its Authorized Contractors will have the right to audit Vendor's measurement, monitoring, and reporting on all service levels herein, including providing the Agency with access to the data used by Vendor to calculate its performance against the service levels and the measurement, monitoring tools, and procedures utilized by Vendor to generate such data for purposes of audit and verification.

5. Remedies.

5.1. Service Level Credits. Vendor's failure to achieve any of the service levels described in Section 3 (Service Levels) shall constitute a **"Service Level Failure."** Upon the occurrence of any Service Level Failure, Vendor shall issue to the Agency a credit, and shall otherwise be liable to the Agency, in the amount set forth in the table below (**"Service Level Credit"**).

5.2. Notification/Fee Offset. Vendor shall notify the Agency if the Agency becomes entitled to a Service Level Credit in the monthly performance reports as described in Section 4 (Reporting/Audits). The total amount of Service Level Credits to which the Agency is entitled each month shall be reflected on the invoice issued in the second month following the month during which the Service Level Credit(s) was earned as an offset of the fees otherwise due by the Agency to Vendor under the Agreement. Upon request, and in the Agency's sole discretion, Vendor may be required to issue a refund of Service Level Credits to the Agency.

5.3. Service Level Credits:

Service Level Failure	Service Level Credits
Support Response Times/Support Status Updates	1/30th of the monthly fees for each three (3) documented instances in which a Level 1 or 2 Service Level Failure has occurred in a month. 1/60th of the monthly fees for each three (3) documented instances in which a

	Level 3 or 4 Service Level Failure has occurred in a month.
Uptime/Availability	For Downtime occurring during Critical Hours, 3% of the monthly fees for every 0.1% below the required Service Level. For Downtime occurring during Non-Critical Hours, 1% of the monthly fees for every 0.1% below the required Service Level.
Download Times	For Download Times failing to meet the applicable Service Level during Critical Hours, 1% of the monthly fees for every ten (10) instances a Service Level Failure has occurred in a month. For Download Times failing to meet the applicable Service Level during Non-Critical Hours, .5% of the monthly fees for every ten (10) instances a Service Level Failure has occurred in a month.

5.4. Termination for Chronic Service Level Failures. In addition to its termination rights under the Agreement, the Agency may, in its sole discretion, terminate the Agreement or any active Purchasing Instruments without further obligation to Vendor in the event Vendor fails to achieve any of the required Service Levels for (a) three (3) consecutive months, or (b) any three (3) months during a consecutive six (6) month period.

5.5. Survival. Service Level Credits due or owing the Agency shall survive termination of the Agreement.

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute these Special Terms and Conditions, which are effective as of the date of last signature below.

Iowa Office of the Chief Information Officer (**"Agency"**)		**[Name of Vendor]** (**"Vendor"**)	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

7

Special Terms and Conditions #00X
Insurance Requirements

The following Special Terms and Conditions are part of and incorporated into the [Title of Agreement], Agreement No. [_____], (**"Agreement"**) between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer (**"Agency"**), and _____, a corporation organized under the laws of _____ (**"Vendor"**). Capitalized terms used but not defined herein are as defined in the Agreement.

1. Insurance Requirements. Vendor shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the Agency, insurance covering its work of the type and in amounts required by this attachment. Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor's performance of the Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Exhibit shall: (a) remain in full force and effect for the entire Term of the Agreement; and (b) not be reduced, changed (to the detriment of the Agency or any Governmental Entities), or canceled (without being simultaneously replaced by another policy meeting the requirements of this Exhibit). The Agency shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: "It is hereby agreed and understood that the Agency is named as additional insured, and that the coverage afforded to the Agency under this policy shall be primary insurance. If the Agency has other insurance that is applicable to a loss, such other insurance shall be on an excess, secondary, or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance." Notwithstanding the foregoing, the requirement that the Agency be named as additional insureds on all policies of insurance shall not apply to Vendor's Workers Compensation Insurance. The Agency will accept a combined Technology Errors and Omissions and Cyber Liability policy or a separate Technology errors and Omissions and separate Cyber Liability policy. Such insurance shall, (a) cover the liability of Vendor by reason of any actual or alleged error, omission, negligent act, or wrongful act of Vendor committed in rendering or failing to render any products or services, and shall specifically include coverage for liabilities caused by a security breach, breach of privacy, or a breach of privacy regulations, including unauthorized disclosure of information, unauthorized access, or failure to protect a network security breach and liabilities resulting from the unauthorized release, transmission or publication of private or technical information in your possession under the scope of the Agreement; (b) include the indemnification of the Agency for any costs and expenses, including the Agency's notification expenses, incurred by the Agency arising out of a security breach, privacy breach, or breach of privacy regulations; with an occurrence or per claim limit and annual aggregate limit of not less than $15,000,000 each claim/$15,000,000 annual aggregate; and (c) if underwritten on a claims-made insuring agreement, be maintained for a period of not less than two (2) years after the expiration of the Agreement. In the event Vendor fails to secure and continuously maintain the insurance coverage required under this attachment, the Agency may charge Vendor, and Vendor shall pay the Agency, (a) the Agency's actual expenses incurred in purchasing similar protection and (b) the value or amount of any claims, actions, damages, liabilities, costs, and expenses paid by the Agency which would not have been paid by the Agency if Vendor had complied with the requirements of this Exhibit.

2. Insurance Policies. Unless otherwise requested by the Agency, Vendor shall cause to be issued insurance policies with the coverages set forth below:

Type of Insurance	***Limit***	***Amount***
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	$2 million $1 million $1 million $1 million
Excess Liability, umbrella form	Each Occurrence Aggregate	$1 million $1 million
Technology Errors and Omissions Insurance	Each Occurrence Aggregate	$1 million $1 million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law
Cyber Liability / Network Security	Each Occurrence Aggregate	$15 million $15 million

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

4. Certificates of Coverage. At the time of execution of the Agreement, Vendor shall deliver to the Agency certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products, and liability of the Vendor related to the Agreement, certifying that the Agency is named as an additional insured on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Agency. Vendors' certificate(s) must also include all Vendor Contractors as additional insureds under its policies, or Vendor must furnish to the Agency separate certificates for each Vendor Contractor. All coverage for Vendor Contractors shall be subject to the minimum requirements identified above. All certificates of insurance shall be subject to approval by the Agency. The Vendor shall simultaneously with the delivery of the certificates deliver to the Agency one duplicate original of each insurance policy.

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

6. Waiver of Subrogation Rights. Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Agency. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Agency for all policies.

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

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

Iowa Office of the Chief Information Officer ("Agency")		**[Name of Vendor] ("Vendor")**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

8

Attachment #6: Response Checklist

RFP REFERENCE SECTION	RESPONSE INCLUDED		LOCATION OF RESPONSE
	Yes	No	
Digital Copy of the Proposal			
If confidential treatment requested, one (1) Public Copy with Confidential Information Excised			
Transmittal Letter			
Title Page			
Table of Contents			
Technical Proposal:			
Executive Summary, including statement that Respondent agrees to and understands services/goods being solicited			
Respondent Background Information			
Mandatory Specifications, including firm proposal guarantee per RFP cover sheet			
Scored Technical Specifications			
Cost Proposal (Attachment #1):			
Payment Terms			
Payment Methods			
Cost Proposal			
Additional Attachments:			
Certification Letter (Attachment #2)			
Authorization to Release Information (Attachment #3)			
Form 22—Request for Confidentiality (Attachment #4)			
Acceptance/Exceptions to Terms and Conditions (Attachment #5)			