

NON-DISCLOSURE AND RESTRICTED USE AGREEMENT

THIS NON-DISCLOSURE AND RESTRICTED USE AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 2018, by and between _____ [name of Vendor], a corporation with its principal place of business located at _____ (“Vendor”) and the State of Iowa (“State”), acting by and through the Iowa Department of Public Defense (“DPD”).

In consideration of the Vendor’s ability to receive certain information from the State and to have the opportunity to respond to the State’s **Request for Proposal for _RFP842SI036SY_** issued by the State on **4/23/2018** (the “RFP”), and furthermore in consideration of the mutual covenants set for the below and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. DPD will or may provide Vendor with limited access to certain confidential and sensitive information, data and materials, including but not limited to information, data and materials pertaining to blueprints, diagrams, studies, etc. (collectively, the Confidential Property) solely for the purpose of enabling Vendor to prepare a proposal in response to the RFP (the “Authorized Purpose”). Vendor acknowledges and agrees that Confidential Property constitutes valuable and confidential information of the State.

For purposes of this Agreement, the Confidential Property shall also include, but not be limited to:

- Exhibits 1-3, and 6 of this Request for Proposal.

DPD will, in its sole discretion, determine what Confidential Property, if any, it will disclose to the Vendor. This Agreement does not obligate the DPD or the State to enter into any transaction, contract or relationship of any kind with the Vendor, and shall not be construed to limit any rights or remedies DPD may have, or any actions it may take (including without limitation the right to reject a Vendor’s proposal), under the RFP.

2. Vendor acknowledges that the Confidential Property is disclosed to Vendor on a confidential and limited basis under this Agreement. Vendor agrees it will use the Confidential Property solely for the Authorized Purpose and in strict accordance with the terms, conditions, and limitations of this Agreement. Vendor may disclose Confidential Property only to those employees of Vendor who have a genuine and legitimate need to know such information for the Authorized Purpose, provided such employees agree in writing to use the Confidential Property solely for the Authorized Purpose and be bound by all of terms, conditions and limitations of this Agreement. Vendor shall take all diligent and necessary action, by instruction, training, supervision, agreement or otherwise, to: (a) ensure that any such employees agree and comply with the terms, conditions and limitations of this Agreement, and (b) prevent any prohibited or unauthorized disclosure, use or theft of, or access to, the Confidential Property.

3. Vendor and its employees will take all actions necessary or requested by DPD to secure and protect the Confidential Property and prevent unauthorized disclosure, use or theft of, or unauthorized access to, such property. Vendor and its employees will not disclose, distribute, disseminate, publish, copy, reproduce, reprint, recreate, modify or otherwise use any Confidential Property, alone or in combination with any other information, without the prior express written consent of DPD, which consent DPD may withhold for any reason or for no reason at all. Vendor shall maintain procedures acceptable to the DPD for securing and protecting Confidential Property and shall be fully responsible and liable for: (a) disclosing to DPD and securing DPD’ approval of Vendor’s security procedures; (b) ensuring compliance by its employees with the terms, conditions and limitations of this Agreement; (c) any breach of this Agreement by Vendor or its employees; and (d) any breach of security or unauthorized access affecting in any way the Confidential Property. Vendor will notify DPD within two (2) hours of Vendor becoming

aware of any actual or suspected breach of confidentiality or security affecting or involving any Confidential Property, or any unauthorized disclosure, use, or theft of, or access to, any Confidential Property (all of the foregoing shall be collectively referred to as "Security Breach"). In addition, Vendor will, at its expense, fully cooperate with DPD and the State and take all action as may be requested by DPD to respond to and resolve any Security Breach, mitigate any damages that may result from such breach, and notify any individuals who may be affected by such Security Breach.

4. In the event Vendor is required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the Vendor to disclose all or any part of the Confidential Property, the Vendor shall: (i) notify DPD in writing immediately after becoming aware of such law, order or requirement and, if possible, provide DPD with at least ten (10) business days' notice prior to disclosing any Confidential Property in accordance with such law, order or requirement; (ii) use its best efforts not to disclose any Confidential Property pending the outcome of any measures taken by or on behalf of DPD or the State to contest, prevent, or otherwise oppose or seek to limit such disclosure by the Vendor (and any subsequent disclosure or use of the Confidential Property that may result from such disclosure); (iii) cooperate with and provide assistance to DPD regarding such measures; (iv) use its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to any Confidential Property that is required to be disclosed; and (v) disclose only such portion of the Confidential Property as it is legally required to disclose. Notwithstanding any such required disclosure by the Vendor, such disclosure will not otherwise affect the Vendor's and its employees' obligations hereunder with respect to any and all Confidential Property so disclosed.

5. The State shall have and retain sole and exclusive ownership of all right, title, and interest in and to the Confidential Property, including ownership of any and all copyrights, patents, trade secrets, and other intellectual property or proprietary rights arising out of, embodied in, or related to the Confidential Property. Notwithstanding anything herein to the contrary, nothing in this Agreement shall be deemed to: (a) transfer or convey to Vendor, either expressly or impliedly, any right, title, or interest in or to the Confidential Property (or any part thereof); or (b) grant to or create in Vendor, either expressly or impliedly, a license or any other rights with respect to the Confidential Property.

6. Vendor agrees to securely store all Confidential Property only at its business address described above, separate and apart from all other information and documents stored at the same location. Vendor will not use, reproduce, load or store Confidential Property on a computer or device that is accessible to persons to whom disclosure is not permitted, as set forth herein. Vendor will keep a record of the location of all Confidential Property (in any form) in its possession or control and will, upon DPD's request, immediately provide DPD with a copy of such record. Upon DPD's request, Vendor will immediately return to DPD or destroy all Confidential Property, and all documents, analysis, studies, compilations, and other materials containing, embodying or relating to Confidential Property, together with all copies of the foregoing. In the event DPD requests Vendor to return or destroy Confidential Property, Vendor shall immediately comply with such request and shall thereafter not retain any Confidential Property in any form. Vendor shall be fully responsible for the return or destruction of all Confidential Property disclosed to its employees. Any destruction of Confidential Property, or any documents or materials relating thereto, shall be certified in writing by Vendor. The terms and conditions of this Agreement and Vendor's obligations hereunder shall remain in full force and effect notwithstanding the return or destruction of the Confidential Property.

7. Vendor acknowledges and agrees that any violation of the terms, requirements or limitations of this Agreement (including any disclosure or use of the Confidential Property, in whole or in part, in any manner or by any means, other than the use of the Confidential Property for the Authorized Purpose as expressly permitted under this Agreement) cannot be reasonably or adequately compensated for in money damages and would cause the State and DPD immediate and irreparable injury. Accordingly, the Vendor agrees the State and DPD shall be entitled to immediate injunctive or other equitable relief, without any

obligation to post bond. Such remedy shall not be deemed to be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.

8. Vendor and its successors and permitted assigns shall indemnify and hold harmless the State, DPD, and their employees, officers, members, agents, representatives, and officials (“Indemnitees”) from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, 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: (i) any violation or breach of any term or condition of this Agreement by or on behalf of Vendor or its employees; or (ii) any breach of security affecting Confidential Property (including without limitation any Security Breach as defined above) or any unauthorized access to or use of Confidential Property. Vendor’s indemnification obligations under this Section 8 are not limited to third-party claims, but shall also apply to any claims (including, but not limited to, first-party claims between the parties) that either party may assert against the other in connection with this Agreement.

9. This Agreement shall be governed 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 only 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 in a United States District Court, the matter shall be commenced only in the United States District Court for the Southern District of Iowa, Central Division. Vendor hereby agrees to submit to the jurisdiction of the aforesaid courts and 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 State or DPD, including, without limitation, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. This Section 9 shall survive termination or expiration of this Agreement.

10. The State and DPD make no representation or warranty as to the accuracy, completeness, adequacy, condition, suitability, or usefulness of the Confidential Property, and the State and DPD shall have no liability whatsoever to the Vendor resulting from Vendor’s access or use of the Confidential Property. **THE CONFIDENTIAL PROPERTY IS PROVIDED “AS IS” TO VENDOR, AND THE STATE AND DPD DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, AND/OR NON-INFRINGEMENT.**

11. No failure or delay by the State or DPD in exercising any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof or the exercise of any other right, remedy, power or privilege hereunder so operate as a waiver.

12. The State and DPD may terminate this Agreement at any time by providing Vendor with written notice of termination, specifying the effective date of termination. Vendor’s obligations under this Agreement shall survive any termination or stated expiration of this Agreement.

13. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be in writing and executed by both parties.

14. This Agreement represents the entire agreement between the parties and neither party is relying on any representation, which may have been made which is not included in this Agreement.

15. The various rights, powers, options, elections and remedies of either party expressed or provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or

exclusive or any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged.

16. 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.

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

18. All the 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

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

20. Vendor shall comply with all state and federal laws, rules, ordinances, regulations and orders applicable to this Agreement or Vendor's performance hereunder.

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

State of Iowa, acting by and through the Iowa
Department of Public Defense

Vendor

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____