

Request for Proposal

RFP Cover Sheet

Administrative Information

Title of RFP: Voting Services		RFP Number: RFP0917005024	
Agency: Iowa Department of Administrative Services on behalf of Iowa Public Employment Relations Board (PERB)			
Number of years of initial contract term: One	Number of possible annual extensions: Five	Available to Political Subdivisions?	Yes
State Issuing Officer: Steve Oberbroeckling Purchasing Agent III Phone: 515-725-2090 E-mail: steve.oberbroeckling@iowa.gov		Mailing Address: Iowa Department of Administrative Services Hoover State Office Building, Level 3 1305 East Walnut Street Des Moines, IA 50319-0105	
PROCUREMENT TIMETABLE—Event or Action:		Date/Time (Central Time):	
State Posts Notice of RFP on TSB website		31 MAR 2017	
State Issues RFP		03 APR 2017	
RFP written questions, requests for clarification, and suggested changes from Contractors due:		17 APR 2017/1:00PM	
Agency's written response to questions, requests for clarification, and suggested changes due approximately:		24 APR 2017	
Proposals Due Date:		15 MAY 2017/1:00PM	
Vendor Demonstration:		30 MAY 2017 – 02 JUNE 2017	
Relevant Websites:		Web-address:	
Internet website where Addenda to this RFP will be posted:		http://bidopportunities.iowa.gov/	
Number of Copies of Proposals Required to be Submitted:	Technical Proposal : 1 Original, 2 Copies, and 1 Digital Cost Proposal: 1 Original, 2 Copies, and 1 Digital		

Table of Contents

1. INTRODUCTION

- 1.1. Purpose**
- 1.2. Definitions**
- 1.3. Overview of the RFP Process**
- 1.4. Background**

2. ADMINISTRATIVE INFORMATION

- 2.1. Issuing Officer**
- 2.2. Restriction on Communication**
- 2.3. Anonymous Respondent Communications**
- 2.4. Downloading the RFP from the Internet**
- 2.5. Procurement Timetable**
- 2.6. Questions, Requests for Clarification, and Suggested Changes**
- 2.7. Amendment to the RFP**
- 2.8. Amendment and Withdrawal of Proposal**
- 2.9. Submission of Proposals**
- 2.10. Proposal Opening**
- 2.11. Costs of Preparing the Proposal**
- 2.12. No Commitment to Contract**
- 2.13. Rejection of Proposals**
- 2.14. Nonmaterial Variances**
- 2.15. Reference Checks**
- 2.16. Information from Other Sources**
- 2.17. Verification of Proposal Contents**
- 2.18. Proposal Clarification Process**
- 2.19. Disposition of Proposals**
- 2.20. Public Records and Requests for Confidential Treatment**
- 2.21. Copyright Permission**
- 2.22. Release of Claims**
- 2.23. Respondent Presentations**
- 2.24. Evaluation of Proposals Submitted**
- 2.25. Award Notice and Acceptance Period**
- 2.26. No Contract Rights until Execution**
- 2.27. Choice of Law and Forum**
- 2.28. Preference**
- 2.29. Restrictions on Gifts and Activities**
- 2.30. No Minimum Guaranteed**
- 2.31. Appeals**

3. FORM AND CONTENT OF PROPOSALS

- 3.1. Instructions**
- 3.2. Technical Proposal**
- 3.3. Cost Proposal**

4. MANDATORY SPECIFICATIONS

- 4.1. Overview**

5. EVALUATION AND SELECTION

5.1. Introduction

5.2. Evaluation Committee

5.3. Scoring Breakdown

5.4. Technical Proposal Evaluation and Scoring

5.5. Tied Bids and Preferences

5.6. Cost Proposal Scoring

6. CONTRACTUAL TERMS AND CONDITIONS

6.1. Contract Terms and Conditions

6.2. Attached Agreement

6.3. Contract Length

6.4. Insurance

6.5. Payment Terms

Attachment 1 – Certification Letter

Attachment 2 – Authorization to Release Information Letter

Attachment 3 – Form 22 – Request for Confidentiality

Attachment 4 – Exceptions to Terms and Conditions

Attachment 5 – Response Check List

Attachment 6 – Cost Proposal Form

Attachment 7 – Service Contract

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 in Section 4 of this RFP to the Agency identified on the RFP cover sheet. The Agency intends to award a Contract(s) for the initial period identified on the RFP cover sheet, and the Agency, in its sole discretion, may extend the Contract(s) for up to the number of annual extensions identified on the RFP cover sheet.

1.2 Definitions

For the purposes of this RFP and the resulting contract, the following terms shall mean:

“Agency” means the agency identified on the RFP cover sheet that is issuing the RFP and any other agency that purchases from the Contract.

“Contract” means the contract(s) entered into with the successful Contractor(s) as described in Section 6.

“Contractor” means the awarded business/person to provide the contractual services agreed upon.

“General Terms and Conditions” shall mean the Service Contract attached as Attachment #7.

“Materially Unbalanced Response” means a response in which line item prices are structured so that it is possible that the Respondent who appears to be low will not end up having the lowest overall cost to the State, due to high prices on particular line items.

“Mathematically Unbalanced Proposal” occurs when a Respondent’s pricing on some items is significantly more heavily loaded than the pricing on other items. A mathematically unbalanced response may include pricing on some item(s) that is significantly lower than the Respondent’s actual costs on those item(s) (including reasonable proportionate share of the Respondent’s anticipated profit, overhead costs, and other indirect costs that the Respondent anticipates for the performance of the items in question) and significantly higher than the Respondent’s actual costs on other item(s). In multi-year contracts, a bid might also be mathematically unbalanced if the costs are front-end loaded. A mathematically unbalanced response is also a materially unbalanced response if there is reasonable doubt that awarding the contract to the low Respondent, who submitted a mathematically unbalanced response, would result in the lowest overall cost.

“Proposal” means the Respondent’s proposal submitted in response to the RFP.

“Respondent” means the company, organization or other business entity submitting a proposal in response to this RFP.

“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, 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.

1.3 Overview of the RFP Process

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. It is not intended to be comprehensive. Each Contractor is responsible for determining all factors necessary for submission of a comprehensive Proposal.

Respondents will be required to submit their Proposals in hardcopy and on digital media (i.e. CD, USB drive, etc.). It is the Agency’s intention to evaluate Proposals from all Respondents that submit timely Responsive Proposals, and award the Contract(s) in accordance with Section 5, Evaluation and Selection.

1.4 Background

The Iowa Public Employment Relations Board (PERB) is mandated to hold a retention and recertification election for each public sector bargaining unit to determine whether public employees in that unit wish to retain their employee organization representative. Iowa has approximately 1,200 bargaining units which cover approximately 120,000 public employees in the bargaining units. Currently, bargaining units in Iowa contain anywhere between two to 5,500 employees. Of the total of the bargaining units, 95% of the units contain 100 or less employees. Twelve of the units contain over 1,000 employees. The election date for each bargaining unit is triggered by the expiration date of its collective bargaining agreement. By law, a collective bargaining agreement can be effective for up to five years. The number of retention and recertification elections will vary from year to year and some bargaining units may go up to five years between elections.

These newly enacted recertification elections will take place up to seven times per year with simultaneous elections occurring during the election periods. The number of recertification elections during each election period is dependent upon the expiration date of the collective bargaining agreement.

PERB also conducts elections for initial certifications or decertifications of a bargaining unit’s employee organization representative. These elections are triggered by the filing of a petition with PERB and can take place at any point during the year. Certification and decertification elections may overlap with other elections conducted by PERB, but likely will not coincide exactly with the retention and recertification election periods or other certification or decertification elections. Based on the size and timing of elections, Iowa PERB may continue to do these elections using the current in-house method.

Prior to the passage of recent legislation, employees in a bargaining unit voted only upon the initial certification or when a decertification election was ordered following a request by an

employee in the bargaining unit. These elections traditionally have been conducted in person or by mail-in ballot.

With the increase in the number of elections, PERB is looking for a bidder to provide telephonic voting services, at minimum. In addition to the telephonic voting service, PERB is interested in the option of providing electronic or web-based voting.

2.1 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.

2.2 Restriction on 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. Oral questions related to the interpretation of this RFP will not be accepted. 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.

2.3 Anonymous Respondent Communications

Please note that the Respondent's sole point of contact regarding this RFP is the Issuing Officer. During the procurement process if a Respondent feels that after presenting a concern to the Issuing Officer it was not addressed, or if a Respondent wishes to present a concern and remain anonymous, they may confidentially notify a DAS Fiscal and Policy Analyst regarding their concern. The DAS Fiscal and Policy Analysts are independent third parties separate from the RFP requesting agency and Issuing Officer in order to review a Respondent's concern.

The Fiscal and Policy Analysts may be reached at DAS.FiscalPolicyAnalyst@iowa.gov or confidential letters may be mailed to:

**DAS Fiscal and Policy Analysts
Hoover Building, Third Floor
1305 E. Walnut
Des Moines, IA 50319-0105**

2.4 Downloading the RFP from the Internet

The RFP and any addenda to the RFP will be posted at <http://bidopportunities.iowa.gov/>. The Respondent is advised to check the website periodically for 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 check daily for addenda to posted documents.

2.5 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.

2.6 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 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. 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.

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.

2.7 Amendment to the RFP

The Agency reserves the right to amend the RFP at any time using an addendum. The Respondent shall acknowledge receipt of all addenda in its Proposal. If the Agency issues an addendum after the due date for receipt of Proposals, the Agency may, in its sole discretion, allow Respondents to amend their Proposals in response to the addendum.

2.8 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.

2.9 Submission of Proposals

The Agency must receive the Proposal at the Issuing Officer's address identified on the RFP cover sheet before the "Proposals Due" date listed on the RFP cover sheet. **This is a mandatory specification and will not be waived by the Agency. Any Proposal received after this deadline will be rejected and returned unopened to the Respondent.** Respondents mailing Proposals must allow ample mail delivery time to ensure timely receipt of their Proposals. It is the Respondent's responsibility to ensure that the Proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the Proposal. Electronic mail and faxed Proposals will not be accepted.

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

2.10 Proposal Opening

The Agency will open Proposals after the deadline for submission of Proposals has passed. The Proposals will remain confidential until the Evaluation Committee has reviewed all of the Proposals submitted in response to this RFP and the Agency has issued a Notice of Intent to Award a Contract. See Iowa Code Section 72.3. 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.

2.11 Costs of Preparing the Proposal

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

2.12 No Commitment to Contract

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.

2.13 Rejection of Proposals

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

2.13.1 The Respondent fails to deliver the cost proposal in a separate envelope.

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

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

2.13.4 The Respondent's Proposal limits the rights of the Agency.

2.13.5 The Respondent fails to include information necessary to substantiate that it will be able to meet a specification of the RFP as provided in Section 4 of the RFP.

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

2.13.7 The Respondent fails to include proposal security, if required.

2.13.8 The Respondent fails to include any signature, certification, authorization, stipulation, disclosure or guarantee as provided in Section 4 of this RFP.

2.13.9 The Respondent presents the information requested by this RFP in a format inconsistent with the instructions of the RFP or otherwise fails to comply with the specifications of this RFP.

2.13.10 The Respondent initiates unauthorized contact regarding the RFP with state employees.

2.13.11 The Respondent provides misleading or inaccurate responses.

2.13.12 The Respondent's Proposal is materially unbalanced.

2.13.13 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.

2.13.14 The Respondent alters the language in Attachment 1, Certification Letter or Attachment 2, Authorization to Release Information letter.

2.14 Nonmaterial Variances

The Agency reserves the right to waive or permit cure of nonmaterial variances in the Proposal if, in the judgment of the Agency, it is in the State's best interest to do so. Nonmaterial variances include but are not limited to: minor failures to comply that do not affect overall responsiveness, that are merely a matter of form or format, that do not change the relative standing or otherwise prejudice other Contractors, that do not change the meaning or scope of the RFP, or that do not reflect a material change in the specifications of the RFP. In the event the Agency waives or permits cure of nonmaterial 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.

2.15 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 and to discuss the Respondent's qualifications and the qualifications of any subcontractor identified in the Proposal.

2.16 Information from Other Sources

The Agency reserves the right to obtain and consider information from other sources concerning a Respondent, such as 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, and other publicly available information.

2.17 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.

2.18 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.

2.19 Disposition of Proposals

All Proposals 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 in the public domain and be available for inspection by interested parties, except for information for which Respondent properly requests confidential treatment according to exceptions provided in *Iowa Code Chapter 22* or other applicable law.

2.20 Public Records and Requests for Confidential Treatment

The Agency's release of public records is governed by Iowa Code chapter 22. Contractors are encouraged to familiarize themselves with Chapter 22 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 submitted by a Contractor as non-confidential records unless Contractor requests specific parts of the Proposal be treated as confidential at the time of the submission as set forth herein **AND the information is confidential under Iowa or other applicable law.**

A Contractor requesting confidential treatment of specific information must: (1) fully complete Form 22, (2) identify the request in the transmittal letter with the Contractor's Proposal, (3) conspicuously mark the outside of its Proposal as containing confidential information, (4) mark each page upon which confidential information appears, and (5) 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 Contractor: (1) enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that supports treatment of the material as confidential, (2) justifies why the material should be maintained in confidence, (3) explains why disclosure of the material 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 Contractor to respond to inquiries by the Agency concerning the confidential status of such material.

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 material must be excised in such a way as to allow the public to determine the general nature of the material 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. Contractors may not request confidential treatment with respect to pricing information and transmittal letters. A contractor's request for confidentiality that does not comply with this section or a contractor's request for confidentiality on information or material that cannot be held in confidence as set forth herein are grounds for rejecting contractor'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 Contractor has marked as confidential and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in such action and defend its request for confidentiality. If Contractor fails to do so, Agency may release the information or material with

or without providing advance notice to Contractor and with or without affording Contractor the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction. Additionally, if Contractor fails to comply with the request process set forth herein, if Contractor's request for confidentiality is unreasonable, or if Contractor rescinds its request for confidential treatment, Agency may release such information or material with or without providing advance notice to Contractor and with or without affording Contractor the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction.

2.21 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.

2.22 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.

2.23 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.

2.24 Evaluation of Proposals Submitted

Proposals that are timely submitted and are not rejected will be reviewed in accordance with Section 5 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.

2.25 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 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.

2.26 No Contract Rights until Execution

No Contractor shall acquire any legal or equitable rights regarding the Contract unless and until the Contract has been fully executed by the successful Contractor and the Agency.

2.27 Choice of Law and Forum

This RFP and the Contract shall be governed by the laws of the State of Iowa. Changes in applicable laws and rules may affect the award process or the Contract. Respondents are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

2.28 Preference

By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa. Preference application: Tied responses to solicitations, regardless of the type of solicitation, are decided in favor of Iowa products and Iowa-based businesses per 11 IAC 117.5(1)-(2), 117.12(4).

2.29 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 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.

2.30 No Minimum Guaranteed

The Agency does not guarantee any minimum level of purchases under the Contract.

2.31 Appeals

Appeals of the Notice of Intent to Award are governed by the Agency's vendor appeal process. Contractors may obtain information about the appeal process from the Issuing Officer and at Iowa Administrative Code chapters 11-7 and 11-105.

SECTION 3 FORM AND CONTENT OF PROPOSALS

3.1 Instructions

These instructions describe and define 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 typewritten on 8.5" x 11" paper, include numbered pages, and sent in sealed envelope. 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 placed in separate sealed envelopes. The envelopes shall be labeled with the following information:

RFP Number: 0917005024
RFP Title: Voting Services
Steve Oberbroeckling
Iowa Department of Administrative Services
Hoover State Office Building, Level 3
1305 East Walnut Street
Des Moines, IA 50319-0105

The Agency shall not be responsible for misdirected packages or premature opening of Proposals if a Proposal is not properly labeled.

3.1.2 1 Original, 1 Digital, & 2 Copies of the Technical Proposal shall be timely submitted to the Issuing Officer in a sealed envelope. 1 Original, 1 Digital, & 2 Copies of the Cost Proposal shall be submitted in a separate sealed envelope.

Technical Proposal Envelope Contents
Original Technical Proposal and any copies
Public Copy (if submitted)
Technical Proposal on digital media
Electronic Public Copy on same digital
media (if submitted)

Cost Proposal Envelope Contents
Original Cost Proposal and any copies
Cost Proposal on digital media

3.1.3 If the Respondent designates any information in its Proposal as confidential pursuant to Section 2, the Respondent must also 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".

3.1.4 Proposals shall not contain promotional or display materials.

3.1.5 Attachments shall be referenced in the Proposal.

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

3.2 Technical Proposal

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

Exhibit 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, electronic mail address, fax number, and telephone number. Any request for confidential treatment of information shall be included in the transmittal letter in accordance with the provisions of Section 2.20.

[Note: If deemed necessary by the Respondent, the Respondent shall sign and submit as part of Exhibit 18 the document included as Attachment #3 Form 22 – Request for Confidentiality.]

Exhibit 2 – 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:

- Statements that demonstrate that the Respondent has read and understands the terms and conditions of the RFP including the contract provisions in Section 6, except as noted in Attachment #4 Exceptions to Terms and Conditions.
- An overview of the Respondent's plans for complying with the specifications of this RFP.
- Any other summary information the Respondent deems to be pertinent.

Exhibit 3 – Firm Proposal Terms

The Respondent shall guarantee in writing the goods and/or services offered in the Proposal are currently available and that all Proposal terms, including price, will remain firm 120 days following the deadline for submitting Proposals.

Exhibit 4 – Respondent Background Information

The Respondent shall provide the following general background information:

- Does your state have a preference for instate Contractors? Yes or No. If yes, please include the details of the preference.
- 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.
- Form of business entity, i.e., corporation, partnership, proprietorship, or LLC.
- Copy of W-9.
- State of incorporation, state of formation, or state of organization.
- 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.
- Number of employees.
- Type of business.
- Name, address and telephone number of the Respondent's representative to contact regarding all contractual and technical matters concerning the Proposal.
- 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.
- Respondent's accounting firm.

- Awarded Contractor will be required to register to do business in Iowa before payments can be made.
- For Contractor registration documents, go to:
https://vss.iowa.gov/webapp/VSS_ON/AltSelfService

Exhibit 5 – Experience

The Respondent must provide the following information regarding its experience:

- Number of years in business.
- Number of years of experience with providing the types of services sought by the RFP.
- The level of technical experience in providing the types of services sought by the RFP.
- A list of all goods and/or services similar to those sought by this RFP that the Respondent has provided to other businesses or governmental entities.
- Experience providing election services to labor organizations or other organizations that have had similar elections.
- Provide reference contact person and telephone number from three (3) previous or current customers or clients knowledgeable of the Respondent's performance in providing goods and/or services similar to the goods and/or services described in this RFP.

Exhibit 6 – Personnel

The Contractor must provide resumes for all key personnel who will be involved in providing the goods and/or services contemplated by this RFP. The following information must be included in the resumes:

- Full name
- Education
- Years of experience and employment history particularly as it relates to the requirements of the RFP

Exhibit 7 – Termination, Litigation, and Debarment

The Respondent must provide the following information for the past five (5) years:

- Is there any current litigation in progress involving this voting service? If so, please explain.
- Has the Respondent had a contract for goods and/or services terminated for any reason? If so, provide full details regarding the termination.
- Describe 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. Provide full details regarding the circumstances, including dollar amount of damages, penalties and settlement payments.
- Describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Respondent to engage in any business, practice or activity.
- A list and summary of all litigation or threatened litigation, administrative or regulatory proceedings, or similar matters to which the Respondent or its officers have been a party.
- Any irregularities discovered in any of the accounts maintained by the Respondent on behalf of others. Describe the circumstances and disposition of the irregularities. Failure to disclose these matters may result in rejection of the Proposal or termination of any subsequent Contract. The above 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 Contractor, following execution of the Contract.

Exhibit 8 – Acceptance of Terms and Conditions

By submitting a Proposal, Respondent acknowledges its acceptance of the terms and conditions of the RFP and the General Terms and Conditions and Iowa HSEMD Additional 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 General Terms and Conditions language it proposes to include in place of the provision. If Respondent’s exceptions or 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.

Exhibit 9 – Certification Letter

The Respondent shall sign and submit with the Proposal, the document included as Attachment #1 (Certification Letter) in which the Respondent shall make the certifications included in Attachment #1.

Exhibit 10 – Authorization to Release Information

The Respondent shall sign and submit with the Proposal the document included as Attachment #2 (Authorization to Release Information Letter) in which the Respondent authorizes the release of information to the Agency.

Exhibit 11 – Mandatory Specifications

The Respondent shall answer whether or not it will comply with each mandatory specification in Section 4 of the RFP. Where the context requires more than a yes or no answer or the specific specifications so indicates, Respondent shall explain how it will comply with the specification. Merely repeating the Section 4 mandatory specifications 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.

Exhibit 12-Functionality and Capabilities

Describe your proposed solution’s functionality and capabilities. Answers should include at least the following information regarding:

- The limit (minimum and maximum) on the number of ballots cast in a single election for the telephonic voting service and for any electronic or web-based voting service provided.
- The limit (minimum and maximum) on the number of elections being held simultaneously for the telephonic voting service and for any electronic or web-based voting service provided.
- The ability for Iowa PERB to perform testing on either the telephonic voting service or any electronic or web-based voting service provided prior to the beginning of the election period.
- The ease of use of the telephonic voting service, or any electronic or web-based voting service provided, for the entire voting population, including a description of compliance with applicable civil rights laws.
- Storage of voter identification, cast ballots, and other election information in a database.

- The speed and capability of the telephonic voting service, or any electronic or web-based voting service provided, particularly whether the telephonic voting service uses a secured digital T1 line with interactive voice response.
- The generation and method used for voter identification to authenticate a voter's identification prior to accessing an application in either a telephonic voting service environment or any electronic or web-based voting service provided.

Exhibit 13 – Reporting

Describe your proposed solution's reporting procedures. Answers should include at least the following information regarding:

- The reporting capabilities of the telephonic or electronic or web-based voting service provided.
- The timeline for determining election results after the close of the voting period.
- The process for providing Iowa PERB with the voter identification if a party raises a challenge to a particular voter's ballot.
- The ability to provide Iowa PERB with names of voters at all points during election period and up to 60 days after election period ends.
- The ability to provide Iowa PERB with an electronic report of election results (in format identified by Iowa PERB) within 12 hours of the end of the voting period.
- The use of a secure database to store, process, and tabulate the elections' results, including any record of the questions and answers from a telephonic voting system and any electronic or web-based voting system(s) used for that election.

Exhibit 14 – Electronic or Web-based Voting Service Options

This section is not mandatory. If you offer electronic or web-based voting service options, please describe your proposed solution's electronic or web-based voting service options. Answers should include at least the following information:

- The different types of electronic or web-based voting systems available and the use of different voting systems in conjunction with one another.
- The technical requirements of the system, including additional hardware and/or software required to run the system.
- The integration of future technology in your telephonic voting service or any other voting service.

Exhibit 15 – Customer Service

Describe your proposed solution's customer service features. Answers should include at least the following information regarding:

- The process when a voter has issues casting a ballot and the communications between the Respondent and Iowa PERB regarding these issues.
- The Respondent's availability to communicate with Iowa PERB as needed throughout the year.
- Any down time (e.g. outages, disruptions, etc.) of the telephonic voting service or any electronic or web-based voting service provided and the process for reporting that to Iowa PERB.
- A contingency plan describing recovery actions for any down time of greater than 30 minutes on a telephonic voting environment or any electronic or web-based voting environment provided.

Exhibit 16 – Security

Describe your proposed solution's security measures. Answers should include at least the following information regarding:

- How the Respondent addresses security and prevents and/or identifies tampering in the telephonic voting system or any electronic or web-based voting system provided.
- The security, accuracy, and reliability of election data and the process for ensuring that.
- Any testing process in place to ensure the accuracy of the election results, and a description of that process.
- Any documented problems with the telephonic voting service, or any electronic or web-based voting service provided, and a description of how those issues impacted users of the service, and the steps taken to resolve the issues.
- A contingency plan to address any breaches of voter data and to provide remedies or protections required under applicable law.
- A description of the PIN for a voter to ensure the identity of the voter prior to that person casting a ballot.
- Any encryption of voter identity.
- A description of the security of the database that would retain all related voting data. The ability of the Respondent to remove and destroy that data upon Iowa PERB's request.
- The ability to provide secure communications in a format of PERB's choosing to Iowa PERB relating to the voting data as the voting data (including the names of those who voted and how they voted) are confidential under Iowa law.

Exhibit 17 – Implementation and Maintenance Training

Describe the implementation and maintenance process of your proposed solution. Answers should include at least the following information regarding:

- Any training that would be provided to Iowa PERB staff regarding the use of the telephonic voting service or any other voting service provided, and the ability to provide that training prior to October 2017.
- Any ongoing training or technical support the Respondent would provide to Iowa PERB staff.
- The ability to meet the October 10, 2017, election period time frame.

Exhibit 18 – Demonstration

The Respondent must, upon request, provide a formal demonstration of the telephonic voting system(s) and any other voting system provided.

Exhibit 19 – Addendums

Provide signed copy of posted RFP addendums.

Exhibit 20 – Request for Confidentiality

If deemed necessary by the Respondent, the Respondent shall sign and submit with the Proposal the document included as Attachment #3 Form 22 – Request for Confidentiality.

3.3 Cost Proposal

The Respondent shall provide its cost proposal in a separately sealed envelope for the proposed goods and/or services. All prices are quoted pursuant to the terms and conditions of this RFP. Respondent's Cost Proposal shall include an all-inclusive, itemized, total cost in U.S. Dollars

(including all travel, expenses, etc. in prices) for the proposed services. All pricing to be FOB Destination, freight cost, and all expenses included; and based on Net 60 Days Payment Terms. Cost proposals must utilize Cost Proposal Attachment #6 format and include the following:

- Provide cost per eligible voter for use of the voting service environment(s).
- Provide any implementation costs.
- Provide any one time and recurring costs for system. Recurring costs are to be for a 6 year period to cover initial term and extensions to contract.
- Equipment costs.
- Any other costs associated with proposed system.
- Pricing for options.

3.3.1 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. Contractors shall provide payment acceptance information in this section 3.3.1 in their Cost Proposals. **This information will not be scored as part of the Cost Proposal or evaluated as part the Technical Proposal.**

3.3.1.1 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 Contractor uses the Pcard or EAP payment methods. Pcard-accepting Contractors must abide by the State of Iowa's Terms of Pcard Acceptance, as provided in Section 6.2 of the RFP. Contractors must provide a statement regarding their ability to meet the requirements I this subsection, as well as identifying their transaction reporting capabilities (Level I, II, or III).

3.3.1.2 Electronic Funds Transfer (EFT) by Automated Clearing House (ACH)

Contractors shall provide a statement regarding their 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_a_uthorization_form.pdf

3.3.1.3 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.

3.3.2 Payment Terms

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

3.3.3 Contractor Discounts

Contractors shall state in their Cost Proposals whether they offer any payment discounts, including but not limited to:

3.3.3.1 Prompt Payment Discount

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

3.3.3.2 Cash Discount

The State may consider cash discounts when scoring Cost Proposals.

SECTION 4 MANDATORY SPECIFICATIONS
--

4.1 Overview

The successful Contractor shall provide the goods and/or services to the State in accordance with the specifications and technical specifications as provided in this Section. The Respondent shall address each specification in this Section and indicate whether or not it will comply with the specification. If the context requires more than a yes or no answer or the section specifically indicates, Respondent shall explain how it will comply with the specification. Proposals must address each specification. Merely repeating the specifications may be considered non-responsive and may disqualify the Respondent. Proposals must identify any deviations from the specifications of this 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.

All items listed in this section are Mandatory Specifications. Respondents must indicate either “yes” or “no” to each specification in their Proposals and provide an explanation as to how the specification is met. By indicating “yes” a Respondent agrees that it shall comply with that specification throughout the full term of the Contract, if the Respondent is successful. In addition, if specified by the specifications or if the context otherwise requires, the Respondent shall provide references and/or supportive materials to verify the Respondent’s compliance with the specification. The Agency shall have the right to determine whether the supportive information and materials submitted by the Respondent demonstrate that the Respondent will be able to comply with the Mandatory Specifications. If the Agency determines the responses and supportive materials do not demonstrate the Supplier will be able to comply with the Mandatory Specifications, the Agency may reject the Proposal.

- 4.1.1** Telephonic voting service must be functional and ready to use for an election period beginning October 10, 2017.
- 4.1.2** Any training provided to PERB staff must be complete prior to October 1, 2017.
- 4.1.3** Must currently be in the business of providing secured telephonic voting services for a minimum of two years. Any electronic or web-based environment used for voting must be used in combination with the telephonic voting system. All environments for voting must allow for votes to be cast without cost to the voter and be accessible 24/7 during the voting period.
- 4.1.4** Telephonic voting service, and any electronic or web-based voting service provided, must be able to be configured for multiple simultaneous elections.
- 4.1.5** Must provide a toll free helpline that will be available Monday to Friday of the applicable voting period from 8:00 AM to 6:00 PM CT during the course of the election.
- 4.1.6** Must be able to conform to deadlines contained in Iowa Code section 20.15(2) as amended by 2017 Iowa Acts, House File 291.

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 value to the State. The Agency will not necessarily award the Contract to the Contractor offering the lowest responsible bid. Instead, the Agency will award to the Contractor whose Responsive Proposal the Agency believes will provide the best value to the State.

5.2 Evaluation Committee

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

5.3 Scoring Breakdown

Technical Proposal	800
<u>Cost Proposal</u>	<u>200</u>
Total	1000

5.4 Technical Proposal Evaluation and Scoring

All Technical Proposals will be evaluated to determine if they comply with the Mandatory Specifications. The evaluation committee will fully evaluate and score all Responsive Proposals submitted by Responsible Respondents in accordance with this Section. In addition to other RFP requirements, to be deemed a Responsive Proposal, the Proposal must:

- Answer “Yes” to all parts of Section 4 and include supportive materials as required to demonstrate the Respondent will be able to successfully comply with the Mandatory Specifications in that section and
- Obtain the minimum score of 480 points (60%) of the available 800 points for the Technical Proposal.
- The committee members may select Respondents to participate in demonstrations.

An addendum identifying the point value assigned to specific Section 3 Exhibits (Technical Proposal) will be posted prior to opening submitted proposals.

5.5 Tied Bids and Preferences

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 contractors 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.

Notwithstanding the foregoing, if a tied bid involves an Iowa-based contractor or products produced within the State of Iowa and a contractor based or products produced outside the State of Iowa, the Iowa contractor will receive preference. If a tied bid involves one or more

Iowa contractors and one or more contractors outside the state of Iowa, a drawing will be held among the Iowa contractors only.

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

Second preference in tied bids will be given to contractors based in the United States or products produced in the United States over contractors based or products produced outside the United States.

Preferences required by applicable statute or rule shall also be applied, where appropriate.

5.6 Cost Proposal Scoring

After the Technical Proposals are evaluated and scored, those proposals which meet the minimum score for the Technical Specifications will advance in the evaluation process and their Cost Proposals will be opened and scored.

To assist the agency in evaluating, Cost Proposals may be evaluated and points awarded as detailed in this paragraph. The Cost Proposals will remain sealed during the evaluation of the Technical Proposal and any Bidder Demonstration. Only prospective contractors that meet all of the required features will be considered during the cost evaluation phase of the review process. The compliant prospective contractor's technical points will be added to the cost points, to obtain the total points awarded for the proposal. The Cost Proposals for the mandatory telephonic system fixed rate will be ranked from cheapest to the most expensive. The cheapest shall receive the maximum number of points available in this section. To determine the number of points to be awarded all other Cost Proposals, the cheapest bid will be used in all cases as the numerator. Each of the other bids will be used as the denominator. The percentage will then be multiplied by the maximum number of points and the resulting number will be the cost points awarded to other compliant contractors. Percentages and points will be rounded to the nearest whole value.

Example:

Contractor A quotes \$35,000; Contractor B quotes \$45,000 and Contractor C quotes \$65,000.

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

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

Contractor C: $\frac{\$35,000}{\$65,000}$ = receives 54% of available points on cost.

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 in accordance with the provisions of the RFP, the General Terms and Conditions, the offer of the successful Contractor contained in its Proposal, and any other terms deemed necessary by the Agency. No objection or amendment by a Contractor to the provisions or terms and conditions of the RFP or the General Terms and Conditions shall be incorporated into the Contract unless Agency has explicitly accepted the Contractor's objection or amendment in writing.

The General Terms and Conditions will be incorporated into the Contract. The General Terms and Conditions may be supplemented at the time of contract execution and are provided to enable Contractors to better evaluate the costs associated with the RFP specifications and the Contract. All costs associated with complying with these specifications should be included in any pricing quoted by the Contractor.

By submitting a Proposal, Contractor acknowledges its acceptance of the terms and conditions of the RFP and the General Terms and Conditions without qualification except as otherwise expressly stated in its Proposal. If the Contractor 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 General Terms and Conditions language it proposes to include in place of the provision. If Contractor's exceptions or proposed responses materially alter the RFP, or if the Contractor 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 reserves the right to either award a Contract(s) without further negotiation with the successful Contractor or to negotiate Contract terms with the successful Contractor if the best interests of the State would be served.

6.2 Attached Agreement

The Contract will require the successful Contractor to agree to terms contained in RFP Attachment 7.

6.3 Contract Length

The term of the Contract will begin and end on the dates indicated on the RFP cover sheet. The Agency shall have the sole option to renew the Contract upon the same or more favorable terms and conditions for up to the number of annual extensions identified on the RFP cover sheet.

6.4 Insurance

The Contract will require the successful Contractor 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 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
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	\$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

6.5 Payment Terms

- 6.5.1** Respondent will provide report after the election period identifying the number of eligible voters for which a charge is assessed.
- 6.5.2** Iowa PERB may dispute the number of eligible voters for which a charge was assessed within one week of receipt of the report.

**Attachment #1
Certification Letter**

(Date) _____

Steve Oberbroeckling, Issuing Officer
Iowa Department of Administrative Services
Hoover State Office Building, Level 3
1305 East Walnut Street
Des Moines, IA 50319-0105

Re: Request for Proposal Number RFP0917005024 - PROPOSAL CERTIFICATIONS

Dear Steve:

I certify that the contents of the Proposal submitted on behalf of **(Name of Respondent)** in response to **Iowa Department of Administrative Services** for Request for Proposal Number RFP0917005024 for PERB Voting Services are true and accurate. I also certify that Respondent has not knowingly made any false statements in its Proposal.

Certification of Independence

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

Certification Regarding Debarment

I certify that, to the best of my knowledge, neither Respondent nor any of its principals: (a) 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; (b) have within a five year period preceding this Proposal been convicted of, or had a civil judgment rendered against them for 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; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) 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; and (d) have not within a three year period preceding this Proposal had one or more public transactions (federal, state, or local) terminated for cause.

This certification is a material representation of fact upon which the Agency has relied upon when this transaction was entered into. If it is later determined that Respondent knowingly rendered an erroneous certification, in addition to other remedies available, the Agency may pursue available remedies including suspension, debarment, or termination of the contract.

Certification Regarding Registration, Collection, and Remission of Sales and Use Tax

Pursuant to *Iowa Code sections 423.2(10) and 423.5(8) (2013)* 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 Contractors 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)*.

Respondent also acknowledges that the Agency may declare the Respondent’s Proposal or resulting contract void if the above certification is false. The Respondent also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract in addition to other remedies available to Agency.

Sincerely,

Signature

Name and Title of Authorized Representative

Date

Attachment #2
Authorization to Release Information Letter

(Date) _____

Steve Oberbroeckling, Issuing Officer
Iowa Department of Administrative Services
Hoover State Office Building, Level 3
1305 East Walnut Street
Des Moines, IA 50319-0105

Re: Request for Proposal Number RFP0917005024 - AUTHORIZATION TO RELEASE INFORMATION

Dear Steve:

(Name of Respondent) hereby authorizes the **Iowa Department of Administrative Services** ("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 Request for Proposal (RFP) Number RFP0917005024.

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 #3
Form 22 – Request for Confidentiality

Per section 2.20 of the Request for Proposal (RFP), a Contractor requesting portions of its Proposal be maintained in confidence must complete this form and submit it with its Proposal. Contractors should read and familiarize themselves with chapter 22 of the Iowa Code regarding release of public records before completing this form. Section 2.20 of the RFP provides the Contractor instructions regarding how to request confidential treatment of portions of its Proposal.

NOTE: Completion of this Form is the sole means of requesting confidential treatment. Completion of the form and agency's acceptance of Contractor's submission does not guarantee the agency will grant Contractor's request for confidentiality. The agency may reject Contractor's Proposal entirely in the event Contractor requests confidentiality and does submit a fully completed Form or requests confidentiality for portions of its Proposal that are improper under the RFP.

To request confidentiality, Contractor must provide the following information:

- 1 Contractor must present its request for confidentiality in the transmittal letter of its proposal. **Check box when completed.**

- 2 Contractor must conspicuously mark confidential material in its proposal in accordance with section 2.20 Public Records and Requests for Confidential Treatment. **Check box when completed.**

- 3 Contractor must specifically identify and list the proposal section(s) for which it seeks confidentiality and answer the following questions for each section listed :
 - 3.1 Explain the specific grounds in *Iowa Code Chapter 22* or other applicable law which support treatment of the material as confidential.
 - 3.2 Justify why the material should be kept in confidence.
 - 3.3 Explain why disclosure of the material would not be in the best interest of the public.
 - 3.4 Provide the name, address, telephone, and email for the person at Contractor's organization authorized to respond to inquiries by the Agency concerning the status of confidential materials.

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

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

- 4 Contractor must submit a Public Copy of the Proposal from which the confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the Proposal as possible. **Check box when completed.**

This form must be signed by the individual who signed the Contractor's Proposal. The Contractor shall place this Form 22 completed and signed in its Proposal immediately following the transmittal letter. A copy of this document shall be placed in all Proposals submitted including the Public Copy.

***Failure to provide the information required in this form may result in rejection of Contractor's request for confidentiality or rejection of the Proposal as being non-responsive.**

Signature

Date

Title

**Department of Administrative Services – Central Procurement Enterprise Review
(for agency use only)**

- Contractor's Proposal is rejected as non-compliant because one of more of the following reasons:
 - Contractor requested confidentiality without submitting a fully completed Form 22.
 - Contractor requested confidentiality without presenting its request in the transmittal letter of its Proposal.
 - Contractor requested confidentiality and failed to conspicuously mark such material as confidential within its Proposal in accordance with the RFP.
 - Contractor requested confidentiality without submitting a public copy of its Proposal with the confidential information redacted.
 - Contractor requested confidentiality on material in contravention of the RFP.
 - Other: _____.

- Contractor's submission is accepted.¹

Purchasing Agent Signature

Date

NOTE: Agency's acceptance of Contractor's submission should not be construed as Agency's approval of Contractor's request for confidentiality. Instead, acceptance of Contractor's submission simply means that Agency believes Contractor's Form 22 appears fully completed in accordance with the RFP.

Attachment #4
Exceptions to Terms and Conditions

Proposed exceptions should be listed in this in this attachment of contractor's proposal. Any proposed exceptions should be in a table similar to the one below:

Section #	Original Text Referenced	Proposed Language	Reason for Exception

**Attachment #5
Response Check List**

RFP REFERENCE	RESPONSE INCLUDED	
	Yes	No
Technical Proposal		
One (1) original, two (2) copies of Proposal and One (1) electronic copy on digital media.		
One (1) Public Copy with Confidential Information Excised (optional)		
Exhibit 1 – Transmittal Letter		
Exhibit 2 – Executive Summary (If applicable, include Attachment #4)		
Exhibit 3 – Firm Proposal Terms		
Exhibit 4 – Respondent Background Information		
Exhibit 5 – Experience		
Exhibit 6 – Personnel		
Exhibit 7 – Termination, Litigation, and Debarment		
Exhibit 8 – Acceptance of Terms and Conditions		
Exhibit 9 – Certification Letter (Include Attachment #1)		
Exhibit 10 – Authorization to Release Information (Include Attachment #2)		
Exhibit 11 – Mandatory Specifications		
Exhibit 12 – Functionality and Capabilities		
Exhibit 13 – Reporting		
Exhibit 14 – Electronic or Web-based Voting Service Options		
Exhibit 15 – Customer Service		
Exhibit 16 – Security		
Exhibit 17 – Implementation and Maintenance Training		
Exhibit 18 – Demonstration		
Exhibit 19 – Addendums		
Exhibit 20 – Request for Confidentiality (If applicable, include Attachment #3)		
Cost Proposal		
One (1) original, two (2) copies of Proposal and One (1) electronic copy on digital media. (Include Attachment #6)		

**Attachment #6
Cost Proposal Form**

Payment Terms

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

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

Cost Proposal

All Contractors must complete Section 1. Telephonic System Fixed Rate. Contractor’s Cost Proposal shall include an all-inclusive, itemized, total cost in Firm 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. Include any escalation over the course of six years. The following template is required.

1. Mandatory Telephonic System Fixed Rate

Please use additional pages to provide additional narrative support for the costing information.

Deliverable Item	Total First Year (2017) Implementation or other One-Time Costs	2017 Recurring Costs	2018 Recurring Costs	2019 Recurring Costs	2020 Recurring Costs	2021 Recurring Costs	2022 Recurring Costs
Core System	\$	\$	\$	\$	\$	\$	\$
Training	\$	\$	\$	\$	\$	\$	\$
Cost per Voter	\$	\$	\$	\$	\$	\$	\$
Other (Specify)	\$	\$	\$	\$	\$	\$	\$
TOTAL COST:	\$	\$	\$	\$	\$	\$	\$

2. Optional Electronic or Web-based Voting System - Fixed Cost

Contractors offering an Electronic or Web-based Voting System should complete the following portions of the cost proposal. This section is optional, if you are not offering an Electronic or Web-based Voting system you do not need to complete this section. Please use additional pages to provide additional narrative support for the costing information. Additional information may include, but is not limited to:

- Breakdown of costs per eligible voter for use of the voting service environment(s).
- Breakdown of implementation and applicable one-time web-based voting system setup costs.
- Recurring costs are to be for a 6 year period to cover initial term and extensions to contract.
- Equipment costs (where applicable).
- Any other costs associated with proposed system.
- Where appropriate, pricing for additional system add-ons, options, and services not otherwise contemplated in this RFP. .

Deliverable Item	Total First Year (2017) Implementation or other One-Time Costs	2017 Recurring Costs	2018 Recurring Costs	2019 Recurring Costs	2020 Recurring Costs	2021 Recurring Costs	2022 Recurring Costs
Core System	\$	\$	\$	\$	\$	\$	\$
Implementation	\$	\$	\$	\$	\$	\$	\$
Training	\$	\$	\$	\$	\$	\$	\$
Cost per Voter	\$	\$	\$	\$	\$	\$	\$
Consulting Rate	\$	\$	\$	\$	\$	\$	\$
Other (specify)	\$	\$	\$	\$	\$	\$	\$
TOTAL COST:	\$	\$	\$	\$	\$	\$	\$

3. Consulting Rate

Contractors offering an Electronic or Web-based Voting System should complete the following portions of the cost proposal. This section is optional, if you are not offering an Electronic or Web-based Voting system you do not need to complete this section. Please list all resources and their applicable hourly rates as may be required for additional consulting or potential future related projects. The consulting rate(s) identified below will be used by the Department if, in its sole discretion, the Department determines there is a need for related services outside the scope of the original bid. Additional future projects may be billed on a time and materials or fixed fee basis, depending upon the specifics of the additional project need, and in the best interests of the State. If more room is need to identify resources, please provide additional narrative support for the costing information.

Resource Description (i.e., Project Manager, Business Analyst, etc.)	Hourly Rate
	\$
	\$
	\$
	\$
	\$

**Attachment #7
Service Contract**

***Iowa Department of Administrative Services
Contracts Declaration & Execution Page***

Title of Contract:	Bid Proposal Number	Contract Number
This Agreement is entered into between the State of Iowa (by and through its agency, the Department of Administrative Services) and the Contractor named below:		
State Agency's Name: Department of Administrative Services Central Procurement Bureau on behalf of Iowa Public Employment Relations Board (PERB)		
Contractor's Name:		
		Annual Extensions:
The parties agree to comply with the terms and conditions and attachments which are by this reference made a part of the Agreement: – General Terms and Conditions for Service Contracts/Solicitations – Special Terms (TBD) – Statement of Work (TBD) – Statement of Prices (TBD) – Service Level Agreement (TBD) – Contacts (TBD)		

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto

Contractor:

By <i>(Authorized Signature)</i>	Date Signed
----------------------------------	-------------

Printed Name and Title of Person Signing

Address

State of Iowa: Iowa Public Employment Relations Board (PERB)

By <i>(Authorized Signature)</i>	Date Signed
----------------------------------	-------------

Printed Name and Title of Person Signing

Address

State of Iowa: Department of Administrative Services

By <i>(Authorized Signature)</i>	Date Signed
----------------------------------	-------------

Printed Name and Title of Person Signing

Address

Services Contract

This Contract for professional services and other deliverables (this “Contract”), made and effective as of [DATE] (“Effective Date”), by and between the State of Iowa, acting by and through the [NAME OF DEPARTMENT] (the “Department”) and [NAME OF VENDOR], a corporation organized under the laws of the State of [STATE] (the “Contractor”); each individually a “party” and collectively the “parties”. The parties enter into this agreement pursuant to RFP-----.

1. Purpose & Term

1.1 Purpose. The parties have entered into this Contract for the purpose of ----

1.2 Term. The initial term of this Contract is from the date of last signature on the Contract Declarations and Executions page, through [DATE], unless terminated earlier in accordance with the terms of this Contract. After expiration of the initial term, the Department shall have the option to extend/renew this Contract for up to [NUMBER OF] renewal terms. The decision to extend the Contract will be at the sole option of the Department and may be exercised by the Department by providing written notice to Contractor.

2. DEFINITIONS

The following words shall be defined as set forth below:

“Acceptance” means that the Department has determined that one or more Deliverables satisfy the Department’s Acceptance Tests. Final Acceptance means that all Deliverables to be provided under a Statement of Work satisfy the Department’s Acceptance Tests. Non-acceptance means that the Department has determined that one or more Deliverables have not satisfied the Department’s Acceptance Tests.

“Acceptance Criteria” means the Specifications against which the Deliverables may be evaluated for purposes of Acceptance or Non-Acceptance thereof.

“Acceptance Tests” or “Acceptance Testing” mean the tests, reviews and other activities that are performed by or on behalf of Department to determine whether the Deliverables meet the Acceptance Criteria.

“Authorized Persons” means the Contractor’s employees, contractors, subcontractors or other agents who need to access the State’s personal data to enable the Contractor to perform the services required.

“Breach of security” or “Security Breach” as defined in Iowa Code 715C.1 means unauthorized acquisition of personal information maintained in computerized form by a person that compromises the security, confidentiality, or integrity of the personal information. Good faith acquisition of personal information by a person or that person’s employee or agent for a legitimate purpose of that person is not a breach of security, provided that the personal information is not used in violation of applicable law

or in a manner that harms or poses an actual threat to the security, confidentiality, or integrity of the personal information.

“Contract” means the collective documentation memorializing the terms of the agreement between the Department and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s), these General Terms for Services Contracts, any Special Contract Attachments, and all other attachments to the Contract Declarations & Execution Page(s).

“Contract Declarations & Execution Page(s)” means the document that contains basic information about the Contract and incorporates by reference these General Terms for Services Contracts, and all other attachments to the Contract Declarations and Executions Page(s).

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

“Deliverables” means all of the goods, products, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Contractor (or any agent, contractor or subcontractor of Contractor) in connection with this Contract.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Governmental Entity” shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4), or any successor provision to that section. The term Governmental Entity shall include Iowa agencies, independent agencies, departments, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, offices of elective constitutional or statutory officers, and other units or entities of government. Governmental Entity, for the purposes of this contract, also means other governmental entities in other states in the United States outside of the State of Iowa.

“Non-Public Data” means data, other than personal data, that is not subject to distribution to the public as public information as defined as a Confidential Record by Iowa Code Section 22.7. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

“Personal Data” means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport); financial account information,

including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.

“Security Incident” means the potentially unauthorized access by non-authorized persons to personal data or non-public data the Contractor believes could reasonably result in the use, disclosure or theft of a State’s unencrypted personal data or non-public data within the possession or control of the Contractor. A security incident may or may not turn into a security breach.

“Special Contract Attachments” means any attachment to this Contract indicated on the Contract Declarations & Execution Page(s).

“Specifications” means all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, and the Proposal. Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

“State” means the State of Iowa, the Department, and all State of Iowa agencies, boards, and commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

“State Data” means all data created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State’s hardware, the Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor.

“State Identified Contact” means the Office of the Chief Information Officer’s Chief Information Security Officer (CISO).

“Statement of Work” means the initial Statement of Work, and any additional Statement of Work attached to, and set forth in Schedule A to this Contract. Statements of Work must be mutually agreed to and executed by the Parties to this Contract in order to be considered binding under the terms of this Contract. Each Statement of Work will describe the Deliverables and services to be provided by Contractor. Each Statement of Work attached hereto is incorporated into this Contract by this reference as if fully set forth in this Contract.

3. Documents Incorporated

3.1 Incorporation. The State’s Request for Proposal No. [RFP NUMBER] for [RFP TITLE] (“RFP”) and Vendor’s proposal dated [DATE], in response to the RFP (“Proposal”), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Contract by this reference as if fully set forth in this Contract; provided, however, that none of Vendor’s exceptions or proposed revisions or modifications to the RFP included in its Proposal shall be incorporated into this Contract unless expressly set forth herein.

3.2 Contractual Obligations. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, unless expressly stated herein.

3.3 Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.

3.4 No Inconsistency. The references to the parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. For the avoidance of doubt, Vendor will be responsible for meeting all of the requirements and performing all duties and obligations set forth in the RFP, including, but not limited to, those set forth in Sections 4 and 6 of the RFP; unless otherwise directed or agreed to by the State. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the State shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the State.

4. Scope of Work.

4.1 Statement(s) of Work. Contractor shall provide the Department with Deliverables in accordance with the Statement(s) of Work and all other terms and conditions of this Contract.

4.2 Amendments to Statement(s) of Work. The Parties agree that any Statement of Work may be amended, modified, or replaced at any time during the term of this Contract upon the mutual written consent of the Parties. Such amendments shall be executed in accordance with Section 11.5 Change Order Procedure.

5. Compensation

5.1 Pricing. The Contractor will be compensated in accordance with the payment terms outlined in the Contract Payment Terms and/or the Statement(s) of Work. In consideration of Contractor providing the Department with the Deliverables in accordance with the terms and conditions of this Contract, Contractor shall be entitled to receive the fees or other compensation associated with such Deliverables as specified in a Statement of Work, subject to all terms and conditions of this Contract.

5.2 Invoices / Payment Terms. The Contractor shall submit invoices for Deliverables rendered in accordance with this Contract and any Statement(s) of Work. Invoice(s) shall comply with all applicable rules concerning payment of such claims. The Department shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code 8A.514. The Department may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

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

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

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

6. Termination.

6.1 Termination for Cause by the Department. The Department may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Department's notice of breach or any subsequent notice or correspondence delivered by the Department to Contractor, which period shall not be less than thirty (30) days, provided that cure is feasible. In addition, the Department may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- i. Contractor furnished any statement, representation, warranty or certification in connection with this Contract or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- ii. Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- iii. Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- iv. Contractor terminates or suspends its business;
- v. Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- vi. Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- vii. The Department determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Department or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- viii. Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;

- ix. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- x. Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:
 - a. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - b. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
 - c. Making an assignment for the benefit of creditors;
 - d. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or
 - e. Taking any action to authorize any of the foregoing. The Department's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Department, and the Department shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

6.2 Termination upon Notice. Following thirty (30) days written notice, the Department may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all.

6.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

- i. The legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
- ii. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or
- iii. If the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or
- iv. If the Department's duties, programs or responsibilities are modified or materially altered; or
- v. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the

Department's ability to fulfill any of its obligations under this Contract. The Department shall provide Contractor with written notice of termination pursuant to this section.

6.4 Limitation of the State's Payment Obligations. In the event of termination of this Contract for any reason by either party (except for termination by the Department pursuant to Section 6.1), the Department shall pay only those amounts, if any, due and owing to Contractor hereunder for Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract and/or services actually and satisfactorily performed up to and including the date of termination of this Contract and for which the Department is obligated to pay pursuant to this Contract; provided however, that in the event the Department terminates this Contract pursuant to Section 6.3, the Department's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section 6.4 in no way limits the rights or remedies available to the Department and shall not be construed to require the Department to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Department in accordance with the terms of this Contract. The Department shall not be liable, under any circumstances, for any of the following:

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

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

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

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

7. Confidential Information.

7.1 Access to Confidential Information. The Contractor's employees, agents and subcontractors may have access to confidential information, as defined in Iowa Code Chapter 22.7, maintained by the Department to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Department. The Contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential information shall remain the property of the Department at all times.

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

7.3 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information. Department will authorize payment for Contractor expenses occurred at the mutual agreement of both Parties, and as allowed by State law.

7.4 Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information in compliance with Iowa Code 715C.

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

8. Indemnification.

8.1 By the Contractor. The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims,

damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

- i. Any breach of this Contract;
- ii. Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- iii. The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;
- iv. Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;
- v. Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

8.2 Notification. In the event that a claim is brought against the State for which the State is seeking indemnification under this contract the State will diligently defend against such claim. The State will provide Contractor with notice of any such claim or other circumstance giving rise to Contractor's obligation to defend, indemnify and hold harmless the State. Notwithstanding Section 8, Contractor shall not be obligated to indemnify the State for any losses incurred by the State that were caused solely by the negligence of the State or its employees.

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

9. Limitations of Liability.

The maximum liability of the Parties under this Contract shall be one times the Contract Value (Contract Value is defined as the aggregate total compensation paid by the State to the Contractor during the entire term of the Contract, including all renewals and extensions); provided, however, that under no circumstances shall the foregoing limitation apply to:

- i. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence of Contractor, its officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors,
- ii. Claims related to death, bodily injury, or damage to real or personal property,
- iii. Any contractual obligations of the Contractor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, confidential information, or data breach.

- iv. Claims arising under provisions of the Contract calling for indemnification of the State for third-party claims against the State for bodily injury to persons or for damage to real or tangible personal property caused by the Contractor's negligence or willful conduct.

10. Insurance.

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

10.2 Types and Amounts of Insurance Required. Unless otherwise requested by the Department in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and professional liability in the amounts specified in the RFP. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

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

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

11. Project Management & Reporting.

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

11.2 Review Meetings. During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting.

Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

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

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

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

11.5 Change Order Procedure. The Department may at any time request a modification to a Statement of Work using a change order. The following procedures for a change order shall be followed:

- i. **Written Request.** The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.
- ii. **The Contractor's Response.** The Contractor shall submit to the Department a firm cost proposal for the requested change order within five (5) business days of receiving the change order request.
- iii. **Acceptance of the Contractor Estimate.** If the Department accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract.
- iv. **Adjustment to Compensation.** The parties acknowledge that a change order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

12. Legislative Changes.

The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the

project, the Contractor shall not hold the Department liable in any manner for the resulting changes. The Department shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Department's right to terminate the Contract pursuant to the termination provisions.

13. Intellectual Property.

13.1 Ownership and Assignment of Deliverables. State acknowledges and agrees that except for software owned by third parties, all software, source and object code including, without limitation, databases, documentation, specifications, manuals, instructions and other data and materials created by Contractor in connection with the Contract including all future domestic and foreign patents, copyrights and trade secrets related thereto are and shall remain exclusively owned by Contractor. Contractor hereby grants State and Governmental Entities non-exclusive, non-revocable, non-transferable license to use, distribute, modify, create derivative works, and license others the right to use the Deliverables.

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

13.3 Further Assurances. At the Department's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Department to establish, perfect or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 13.1.

14. Warranties.

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

14.2 Contractor represents and warrants that: (i) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Department hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Department hereunder or under any license agreement related hereto without violating any rights of any third party; (ii) Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the

Department herein; and (iii) the Department shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

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

14.4 Contractor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the 60 day Warranty Period. During the Warranty Period Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within fifteen (15) business days of receiving notice of such Deficiencies or failures from the Department or within such other period as the Department specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the Department's satisfaction, Contractor shall refund the fees or other amounts paid for the deficient Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Department shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Department with questions, problems and concerns about the Deliverables, to inform the Department promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the Department, and provide the Department with all necessary materials with respect to such repaired or corrected Deliverable.

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

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

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

15. Acceptance Testing.

Except as otherwise specified a Statement of Work, all Deliverables shall be subject to the Department's Acceptance Testing and Acceptance. Upon completion of all work to be performed by Contractor with respect to any Deliverable, Contractor shall deliver a written notice to the Department certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Department to conduct Acceptance Tests; provided, however, that Contractor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Department. At the Department's request, Contractor shall assist the Department in performing Acceptance Tests at no additional cost to the Department if stated in the Statement of Work and at the Department's request. Within a reasonable period of time after the Department has completed its Acceptance Testing, the Department shall provide Contractor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. The Department will not unreasonably withhold, delay or condition Acceptance. If the Department determines that a Deliverable satisfies its Acceptance Tests, the Department shall provide Contractor with notice of Acceptance with respect to such Deliverable. If the Department determines that a Deliverable fails to satisfy its Acceptance Tests, the Department shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the Department provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall correct and repair such Deliverable and submit it to the Department within fifteen (15) business days of Contractor's receipt of notice of Non-acceptance so that the Department may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Department determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Contractor has attempted to correct or repair pursuant to this section, that such Deliverable fails to satisfy its Acceptance Tests, then the Department shall have the continuing right, at its sole option, to:

- i. Require Contractor to correct and repair such Deliverable within such period of time as the Department may specify in a written notice to Contractor;
- ii. Refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable);
- iii. Accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Department to correct such Deficiencies; or
- iv. Terminate this Contract and/or seek any and all available remedies, including damages. The Department's right to exercise the foregoing rights and remedies, including termination of this Contract, shall remain in effect until Acceptance Tests are successfully completed and the Department has provided Contractor with written notice of Final Acceptance. If the Department determines that all Deliverables satisfy its Acceptance Tests, the Department shall provide Contractor with notice of Final Acceptance with respect to such Deliverables. Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Department's rights to enforce the terms of this Contract or require performance in the event Contractor breaches this Contract or any Deficiency caused by the contractor is later discovered with respect to such Deliverable(s).

16. Contract Administration.

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

16.2 Compliance with the Law; Nondiscrimination in Employment. The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers. Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section P.8, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

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

16.4 Non-Supplanting Requirement. To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

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

16.6 Amendments. This Contract may be amended in writing from time to time by mutual consent of the parties.

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

16.8 Use of Third Parties. The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Department in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Department reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under

this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Department shall have the right to request the removal of a subcontractor from the Contract for good cause.

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

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

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

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

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

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

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

16.16 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and the Contractor, failure by either party at any time to require

performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

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

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

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

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

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

16.21 Authorization. Contractor represents and warrants that:

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

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

16.23 Records Retention and Access. The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Department throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has

been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall permit the Department, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Department reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

- i. Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.
- ii. The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- iii. The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Department.
- iv. The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.
- v. The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

16.24 Audits or Examination of Records.

16.24.1 Contractors that expend \$750,000 or more in a fiscal year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Single audits must be completed and the data collection form and reporting package must be submitted electronically to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after Contractor's receipt of the auditor's report(s), or nine months after the end of the audit period. The Contractor shall submit to the Department one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Contractor shall also submit one (1) copy of the final audit report to the Department within thirty (30) days after Contractor's receipt thereof, if either the schedule of findings and questioned costs or the summary

schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.

16.24.2 If a Contractor is independently audited but is not required to submit the audit report per the criteria in subsection 16.24.1 above, the Contractor shall submit to the Department one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Within fifteen (15) days following Department's request, the Contractor shall also submit one (1) copy of the final audit report to the Department.

16.24.3 The Department may require, at any time and at its sole discretion, that recipients of non-federal and/or federal funds have an audit performed. The Contractor shall submit one (1) copy of the audit report to the Department within thirty (30) days of its issuance, unless specific exemption is granted in writing by the Department. The Contractor shall submit with the audit report a copy of the separate letter to management addressing non-material findings, if provided by the auditor. The Contractor may be required to comply with other prescribed compliance and review procedures.

16.24.4 The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Department.

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

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

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

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

16.29 Delays or Impossibility of Performance. Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that is not reasonably foreseeable or which if reasonably foreseeable, is not subject to the reasonable control of the party affected. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the reasonable control and without the fault or negligence of the parties. "Force majeure"

does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its reasonable commercial efforts to directly provide alternate, and to the extent possible, comparable performance. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

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

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

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

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

16.34 Repayment Obligation. In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure

of such funds, the Contractor shall be liable to the Department for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

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

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

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

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

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

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

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

16.42 Compliance to Iowa IT Policies and Standards.

16.42.1 Contractor will comply with and adhere to all Department and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and provide training to Contractor's employees and subcontractors concerning such standards, procedures and protocols. Current standards are accessible online at <https://ocio.iowa.gov/standards>.

16.42.2 Contractor will take all precautions and actions necessary to: (i) prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information; and (ii) ensure that all of the Department's and the State's documentation,

electronic files, data, and systems are developed, used, and maintained in a secure manner, protecting their confidentiality, integrity and availability.

16.42.3 Contractor agrees that it will not copy, reproduce, transmit, or remove any Department (or State) information or data without the prior written consent of the Department. Contractor agrees that it shall be liable for any damages, losses, and expenses suffered or incurred by the Department or the State as a result of: (i) any breach of this section, or (ii) any breaches of security (including those described below) that are caused by any action or omission of Contractor or Contractor's employees, agents and subcontractors. Breaches of security include, but are not limited to disclosure of confidential or sensitive information; unauthorized access to Department or State systems; illegal technology transfer; sabotage or destruction of Department or State information or information systems; compromise or denial of Department or State information or information systems; damage to or loss of Department or State information or information systems; and theft.

16.42.4 The Contractor shall immediately report to the Department any such breach of security. In the event of a breach of this section or any breach of security as described herein, the Department may terminate this Contract immediately without penalty or liability to the Department and the State and without affording Contractor any opportunity to cure.

16.43 Off-Shore Sourcing. The State requires that all state data (including directory data and metadata) stays within the continental United States at all times (at rest and in transport).

16.44 Data Ownership.

16.44.1 The State and Governmental Entities will be and remain the sole and exclusive owners of all data of any kind relating in any way to this Contract, the Deliverables provided hereunder, and/or Contractor's performance of its duties under this Contract, including, without limitation, all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State, any Governmental Entity or any User (including by or through Contractor on behalf of the State or any Governmental Entity).

16.44.2 The Governmental Entity that collects, stores, generates, or maintains information or data shall be considered a "**Data Custodian.**" The Data Custodian shall retain ownership of any and all such data, including any data associated with their application at any time. The Data Custodian must approve all access to its data. The Contractor shall not access State user accounts or State data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract or (iv) at the State's written request. In the interest of clarity, "data" as referred to in this Section is not intended to refer to Source Code or Software except to the extent that any of these include, incorporate or otherwise utilize data that is owned by the State, including without limitation all data of any kind relating in any way to the Contractor, this Contract, the Deliverables provided hereunder, and/or Contractor's performance of its duties under this Contract, including, but not limited to, all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State, any Governmental Entity or any User (including by or through Contractor on behalf of the State or any Governmental Entity), in which case, any such data that is included or incorporated into, or otherwise utilized in connection with, the Contractor's proprietary Source Code or Software shall be and remain exclusively owned by the State, and Contractor hereby assigns any and all of its right title and interest in and to such data. Also, in the interest of clarity, to the extent Contractor

incorporates or uses any data described above or otherwise owned by the State and incorporates such data into reports or other documents, software or deliverables, such data will not lose its status as State-owned data by virtue of such incorporation or use, and Contractor hereby assigns any and all of its right title and interest in and to such data.

16.45 Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the following conditions:

- i. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice (ISO27001:2013 standards and controls) and not less stringent than the measures the Contractor applies to its own personal data and non-public data of similar kind.
- ii. All data obtained by the Contractor in the performance of this contract shall become and remain the property of the State.
- iii. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data.
- iv. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The State shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and mutually agreed to as a part of this contract.
- v. At no time shall any data or processes — that either belong to or are intended for the use of a State or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- vi. The Contractor shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

16.46 Data Location: The Contractor shall provide its services to the State and its end users solely from data centers in the continental United States of America. Storage of State data at rest and all backups shall be located solely in data centers in the continental United States of America. The Contractor shall not allow its personnel or contractors to store State data on portable devices, including personal computers, except for devices that are used and kept only at its continental United States of America data centers. The Contractor shall permit its personnel and contractors to access State data remotely only as required to provide technical support. The Contractor may not provide technical user support on a 24/7 basis using a Follow the Sun model.

16.47 Security Incident or Security Breach Notification. The Contractor shall inform the State of any security incident or Security Breach.

- i. Incident Response: The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

- ii. Security Incident Reporting Requirements: The Contractor shall report a security incident to the State Identified Contact within twelve (12) hours.
- iii. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed Security Breach that affects the security of any State content that is subject to applicable Security Breach notification law as required by Iowa Code 715C.2, the Contractor shall (1) promptly notify the State Identified Contact within 12 hours or sooner, unless shorter time is required by applicable law, and (2) take best effort measures to address the Security Breach in a timely manner.

16.48 Security Breach Responsibilities. This section only applies when a Security Breach occurs with respect to personal data within the possession or control of the Contractor.

- i. The Contractor, unless stipulated otherwise, shall within twelve (12) hours notify the State Identified Contact by telephone if it reasonably believes there has been a security incident.
- ii. The Contractor, unless stipulated otherwise, shall promptly notify the State Identified Contact within 12 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Security Breach. The Contractor shall (1) cooperate with the State as requested by the State to investigate and resolve the Security Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Security Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- iii. Unless otherwise stipulated, if a Security Breach is a direct result of the Contractor's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Security Breach; (2) notifications to individuals, regulators or others required by Iowa Code 715C.2; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for Security Breaches in the United States (currently \$201 per record/person) in the most recent Cost of Security Breach Study: Global Analysis published by the Ponemon Institute¹⁷ at the time of the Security Breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

16.49 Background Checks. The Contractor shall conduct nationwide criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the State's information among the Contractor's employees and agents.

16.50 Right to Remove Individuals: The State shall have the right at any time to require that the Contractor remove from interaction with State any Contractor representative who the State believes is detrimental to its working relationship with the Contractor. The State shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the contract or future work orders without the State's consent.