

PARTICIPATING ADDENDUM
for Sourcwell
Contract #020221-AAC Fleet Management and Related Technology Solutions Between
Agile Access Control, Inc. and State of Iowa

1.1 Scope

This participating addendum covers the Sourcwell Contract #020221-AAC ("Contract") with Agile Access Control, Inc. ("Vendor") for Fleet Management and Related Technology Solutions for use by the Iowa Department of Administrative Services authorized by State of Iowa statutes to utilize State contracts with the prior approval of the State of Iowa - Chief Procurement Officer. The Contract, as now or hereafter amended, is incorporated into this addendum ("Participating Addendum") as if set forth at length. Issues of interpretation and eligibility for participation are solely within the authority of the State of Iowa - Chief Procurement Officer.

1.2 Order of Precedence

1. The State of Iowa Participating Addendum ("PA");
2. The Sourcwell Contract (includes negotiated Terms & Conditions)
3. The Sourcwell Solicitation including all Addendums; and
4. Contract Vendor's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

1.3 Terms

The Agency is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

1.4 Modifications or Additions to the Contract

1.4.1 Reports

The Vendor shall submit quarterly reports to the State of Iowa Contract Administrator showing all sales made quarterly against this Participating Addendum within the State of Iowa. Such reports will show the quantities and dollar volume of purchases by each Purchaser.

1.4.2 Pricing

Vendor's stated prices on the Sourcwell website shall be discounted using the discounts and price lists approved and agreed to with the Vendor's Pricing List. The stated discounts are considered to be the minimum discount offered. The Vendor may offer, within written quotes, a higher discount than the approved minimum discount for volume purchases or for competitive reasons. Minimum discounts

listed in pricelist must be held firm for the duration of the Contract's term. Agencies shall be allowed to negotiate further discounting for large volume purchases.

1.4.2.1 Reimbursement Expenses

The State has established rules for limitations on reimbursement expenses. Please reference Department of Administrative Services - State Accounting Enterprise Procedure 210-245 (accessible on the internet) for limits on travel expenses.

1.4.2.2 Non-recurring Expenses

Vendor shall submit a quote for charges for non-recurring expenses within five (5) days of receiving the request for service/equipment.

If the Agency accepts the quote presented by the Contractor, the Contractor shall provide the modified deliverable subject to the approved quote. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract. No expenses shall be incurred by Agency unless an authorized official has accepted the quote in writing.

1.4.3 Invoicing

For the duration of the contract, all product pricing shown on invoices submitted to the State shall:

- Not fall short of the discounts quoted on the Pricing list.
- Be verifiable against the manufacturer's then current retail price list.

1.4.4 Payment Terms

Payment Terms shall be Net 60 days. Per Iowa Code § 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a Vendor. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

1.4.5 Terms and Conditions

The terms and conditions found in Attachment 1 shall govern this Participating Addendum.

1.5 Orders

Any Order placed by an entity ordering under this Participating Addendum for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

1.6 Primary Contacts

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Vendor

Name	Joe Poznick
Telephone	((571) 498-7555 x510
E-mail	jpoznick@agilefleet.com

State of Iowa

Name	Randy Worstell
Telephone	(515) 443-4003
E-mail	randy.worstell@iowa.gov

The Parties will keep and maintain current at all times a primary point of contact for administration of this Participating Addendum.

1.7 Project Managers

The Project Managers, designated below, will 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 either in-person or by phone, unless otherwise mutually agreed, to review and plan the Deliverables being provided under this Contract. Expenses related to in-person meetings shall be billed at cost and at the professional services rates specified in the Sourcewell contract.

Vendor

Name	Joe Poznick
Telephone	((571) 498-7555 x510
E-mail	jpoznick@agilefleet.com

State of Iowa

Name	Allen Meyers
Telephone	(515) 725-2272
E-mail	allen.meyers@iowa.gov

1.8 Entire Agreement

This Participating Addendum (including Attachment 1) and the Contract (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Vendor	Agile Access Control, Inc	State of Iowa
By:	Edwin E. Smith	By: Randy Worstell
Name:	Edwin E. Smith	Name: Randy Worstell
Title:	President	Title: Purchasing Agent
Date:	6/1/2021	Date: 6/1/2021

ATTACHMENT 1 TERMS AND ONDITIONS

1. **Reserved.**
2. **Definitions.** In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:
 - 2.1. **"Acceptance"** means the State has determined a portion of the Deliverables, Application Services, or System(s) satisfy its Acceptance Tests. **"Final Acceptance"** means the State has determined all Deliverables, Application Services, or System(s) satisfy the State's Acceptance Tests. **"Non-acceptance"** means the State has determined that a portion of or all of the Deliverables, Application Services, or System(s) have not satisfied the State's Acceptance Tests.
 - 2.2. **"Acceptance Criteria"** means the Specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, or ot her criteria designated by the State and against which Acceptance Tests are conducted, including any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, to the RFP and Proposal, any Documentation, and any applicable state, federal, foreign and local laws, rules and regulations.
 - 2.3. **"Acceptance Tests" or "Acceptance Testing"** mean s the tests, reviews and other activities that are performed by or on behalf of the State to determine whether any or all Deliverables, Application Services, or System(s) meet Acceptance Criteria or otherwise satisfy the State, as determined by the State in itssole discretion.
 - 2.4. **"Agreement,"** means the collective documentation memorializing the terms between the Agency and the Vendor identified in this Participating Addendum and includes all terms included in the document referenced in Section 1.2 and this Participating Addendum.
 - 2.5. **"Application Services"** means the hosted applications and related Services as may be further defined and described in the RFP, Proposal, Special Terms and Conditions attached hereto and labeled "Application Services/System(s) Description and related Fees," and related Purchasing Instruments," including any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the State's specific needs or use.
 - 2.6. **"Authorized Contractors"** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by the State or any State Users to use, maintain, support, modify, enhance, host, or otherwise assist the State with any Deliverables, the Application Services, or System(s) provided hereunder.
 - 2.7. **"Confidential Information"** means, subject to any applicable federal, State, or local law s and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of

confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent Third Party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

- 2.8. **"Customer Data"** means all information, data, materials, or documents (including Confidential Information and Personal Data) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from the State, State Users, or Users, directly or indirectly, including from any Authorized Contractors of any of the foregoing, related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor in connection with any Customer -Owned Deliverables provided hereunder and all originals and copies of any of the foregoing.
- 2.9. **"Customer Property"** means any property, whether tangible or intangible, of or belonging to the State, including Customer Data and Customer-Owned Deliverables, software (excluding Fleet Commander off-the-shelf software), hardware, programs or other property possessed, owned, or otherwise controlled, maintained, or licensed by the State, including Third-Party Software or Third-Party Intellectual Property.
- 2.10. **"Customer-Owned Deliverables"** means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of, and exclusively for, the State or for a specific project under this Agreement, including all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto, including any underlying Source Code and related Documentation.
- 2.11. **"Deficiency "** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related to a Deliverable(s), the Application Services, or the System(s), including any failure of a Deliverable(s), the Application Services, or System(s), to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable(s), the Application Services, or System(s).

- 2.12. **"Deliverables"** means all of the goods, Software, work, work product, items, materials, and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with this Agreement, including the Application Services, System(s), Software, and Optional Goods and Services, Documentation, and Source Code, including as may be more specifically identified, defined, and agreed upon in a Purchasing Instrument executed hereunder.
- 2.13. **"Documentation"** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel hereunder or otherwise related to or used in conjunction with any Deliverables, the Application Services, or the System(s), in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.
- 2.14. **"Enhancements"** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications or other enhancements made to or with respect to the Application Services, System(s), or related Deliverables (including any new releases or versions related thereto) or other Deliverables provided or made available by Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, and all changes to any Documentation made by Vendor, directly or indirectly, as a result of such Enhancements.
- 2.15. **"Error"** means (i) with respect to any Deliverable(s), the Application Services, or System(s) any defect, flaw, error, bug, or problem of any kind, or any failure of the Deliverable(s), Application Services, or System(s) to conform to an applicable Specification; or (ii) with respect to the Application Services, System(s), or related Deliverables, any failure or problem that impairs or adversely affects the performance, availability, or functionality of thereof.
- 2.16. **"Error Correction"** means either a modification, procedure, or routine that corrects an Error in all material respects.
- 2.17. **"Governmental Entity"** shall include any governmental entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity includes the Executive Branch, Legislative Branch, Judicial Branch, agencies, independent agencies, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government, including political subdivisions or other local governmental entities.
- 2.18. **"I.T. Governance Document(s)"** or **"Governance Document(s)"** means any Information Technology policies, standards, processes, guidelines, or procedures developed by the OCIO or the State.
- 2.19. **"Office of the Chief Information Officer"** or **"OCIO"** means the Office of the Chief Information Officer of the State of Iowa established by Iowa Code chapter 88.

2.20. **"Optional Goods and Services"** means products, equipment, hardware, Software, or services the State procures through Vendor or Vendor Contractors, directly or indirectly, hereunder, including goods or services:

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

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

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

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

2.21.2. Any data or information covered under or protected by Iowa Code chapter 715C.

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

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

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

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

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

2.26. **"Services"** may include:

2.26.1. TheApplicationServicesandSystem(s).

- 2.26.2. Application Services and System(s) maintenance and support services.
- 2.26.3. Any other services within the scope of the RFP and Proposal, including services considered Optional Goods and Services, including as may be further defined, described, and agreed upon by the Parties in a Purchasing Instrument executed hereunder.
- 2.27. **"Software"** means any and all other software, programs, applications, modules and components, in object code form, all related Documentation, Enhancements, and Source Code and all copies of the foregoing.
- 2.28. **"Source Code"** means the human-readable source code, source program, scripts, or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to any Software. Source Code includes all source code listings, instructions (including compile instructions), programmer's notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.
- 2.29. **"Special Terms and Conditions"** means any attachment hereto entitled, in whole or in part, **"Special Terms and Conditions."**
- 2.30. **"Specifications"** means any and all specifications, requirements, technical standards, performance standards, representations, warranties, criteria, and other specifications related to any Deliverables, including the Application Services and System(s), described or stated in this Agreement (including any exhibit or documentation attached to, or provided in connection with this Agreement), any Purchasing Instrument(s), the RFP, and the Proposal, and, solely to the extent not inconsistent with the foregoing, the Documentation.
- 2.31. **"State Users"** means the State of Iowa, the Iowa Department of Revenue, OCIO, and any other Governmental Entity as may be later designated by the State in its sole discretion and communicated to Vendor in writing, and any employees or Authorized Contractors of any of the foregoing.
- 2.32. **"System(s)"** means the Agile Access Control, Inc. Fleet Commander, including any underlying or related platforms and infrastructure, and related Deliverables, as may be further defined and described in the RFP, Proposal, Special Terms and Conditions attached hereto and labeled // Application Services/ System(s) Description and related Fees," and related Purchasing Instruments," including any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the State's specific needs or use.
- 2.33. **"Third Party"** means a person or entity (including, any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.
- 2.34. **"Third Party Intellectual Property"** shall mean intellectual property, including Third Party Software, licensed, made, conceived, or developed by a Third Party and provided or used by or on behalf of the

State or Vendor, as applicable, including:

- 2.34.1. As it relates to intellectual property provided to the State by Vendor, intellectual property comprising or embedded in the Application Services, System(s), or any other Services or Deliverables provided by Vendor under this Agreement, including any Third - Party Software used by or on behalf of Vendor to host the Application Services or System(s);
- 2.34.2. As it relates to intellectual property provided to Vendor by the State, intellectual property comprising or embedded in any Customer Property, including any Third-Party Software licensed to the State and accessed or used by Vendor in transitioning the State from legacy applications and systems to the Application Services and System(s) provided by Vendor hereunder.
- 2.35. **"Third Party Software"** means any software owned or licensed by a Third Party as identified and described in Exhibit A.
- 2.36. **"Users"** means the State Users and any other users of the Application Services or System(s), including external entities or individuals who may enter, upload, download, import, or otherwise access data or information into the System(s) through public-facing web interfaces.
- 2.37. **"Vendor Personnel"** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Services or Deliverables under this Agreement.
- 2.38. **"Vendor Contractor(s)"** means any of Vendors authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Services or Deliverables under this Agreement.

3. Services and Deliverables.

3.1. Performance. -

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

3.1.2. *Purchasing Instruments.*

3.1.2.1. *Generally.* The State and Vendor may execute individual Purchasing Instrument(s) identifying specific Services or Deliverables to be

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

- 3.1.2.2. Amendments to Purchasing Instruments. A Purchasing Instrument may be amended, modified, or replaced at any time during the Term upon the mutual written consent of Vendor and the State.
- 3.1.2.3. Change Order Procedure. The State may at any time request a modification to the scope of a Purchasing Instrument using a change order. The following procedures for a change order shall be followed:
 - 3.1.2.3.1. Written Request. The State shall specify in writing the desired modifications to the Purchasing Instrument with the same degree of specificity as in the original Purchasing Instrument.
 - 3.1.2.3.2. Vendor's Response. Vendor shall submit to the State any proposed modifications to the Purchasing Instrument and a firm cost proposal, if applicable, for the requested change order with in five (5) business days of finalizing the technical details related to the State's change order request.
 - 3.1.2.3.3. Effect of Change Order. Both Parties must sign and date the change order to authorize the change in the Services or Deliverable(s) described therein and incorporate the changes into the applicable Purchasing Instrument and this Agreement. No Services or Deliverable(s) shall be provided pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both Parties. Upon such execution, a change order shall alter only that portion of a Purchasing Instrument to which it expressly relates and shall not otherwise affect the terms and conditions of the Purchasing Instrument or this Agreement.

3.1.3. Delivery.

- 3.1.3.1. Risk of Loss.** To the extent any Deliverable(s), including any hardware or equipment, are mailed or shipped, Vendor or Vendor Contractors shall bear all risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.
- 3.1.3.2. Documentation.** Vendor acknowledges and agrees that it or Vendor Contractors shall, at no charge to the State, deliver and provide to the State all Documentation related to the Applications Services, System(s), Software or other Deliverable(s) that are created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, unless otherwise agreed to by the State in writing.
- 3.1.3.3. Source Code.** Vendor acknowledges and agrees that it or Vendor Contractors shall, upon written request as part of the Change Order, deliver and provide to the State all Source Code related to any Customer-Owned Deliverables and to any other Software or Deliverables as agreed to in writing by the Parties.

3.1.4. Optional Goods and Services. The State may procure Optional Goods and Services through Vendor. Vendor represents and warrants the following with respect to all Optional Goods and Services:

- 3.1.4.1. Equipment or hardware.** Any equipment or hardware provided hereunder will be new and unused; Title to such equipment or hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions; the State's use and possession of such equipment or hardware will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Vendor; and such equipment or hardware will be free of any rightful claim of any Third Party based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.
- 3.1.4.2. Software.** Vendor shall ensure that all Third-Party Software provided hereunder, including Third-Party Software comprising or embedded in the Application Services, System(s), or related Deliverables is licensed to the State pursuant to a license agreement, the terms and conditions of which are acceptable to the State.
- 3.1.4.3. Third Parties.** Vendor shall take all action necessary to ensure the State is able and entitled to receive and enjoy all warranties, indemnities, or other benefits associated with Optional Goods and Services provided hereunder. At the State's request, Vendor shall assign to the State all of licensor's and manufacturer's warranties, indemnities, or other associated benefits

pertaining to such Optional Goods and Services under any related license agreement or other agreement between Vendor and the applicable Third Party.

3.2. Application Services/System.

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

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

4. Compensation and Additional Rights and Remedies.

- 4.1. Pricing/Compensation. The fees for the Services, Deliverables, Application Services, and System shall be in accordance with the Sourcewell RFP and Proposal and as set forth:
 - 4.1.1. In the case of the Application Services and System(s), in the Sourcewell Contract and this Participating Addendum; and
 - 4.1.2. In the case of all other Services and Deliverables, in the Sourcewell Contract and applicable Purchasing Instrument(s).

Failure of the State to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of any Services or Deliverables, including the Application Services or System(s), so long as payment of such undisputed fees is made within the applicable cure period. For the avoidance of doubt, in the event of any dispute related to fees, Vendor shall continue to perform and provide Services and Deliverables, including the Application Services or System(s), until such dispute has been Finally Determined by a court of competent jurisdiction or other agreed-upon governing body. "Finally Determined" means when a claim or dispute has been finally determined by a court of competent jurisdiction or other agreed-upon governing body and either (a) no associated appeal has timely been sought if capable of being sought, or (b) any and all appellate rights properly exercised have otherwise been exhausted.

- 4.2. No Additional Fees. Other than as permitted by Section 4.1 (Pricing/Compensation), the State shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement or any Purchasing Instrument(s). For the avoidance of doubt, there shall be no reimbursable expenses associated with this Agreement, and Vendor shall be solely responsible for all other costs, charges, and expenses it incurs in connection with this Agreement, including equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, travel and lodging, and all other operational and administrative costs and expenses.
- 4.3. Satisfactory performance. Vendor is not entitled to payment for any Services or Deliverable(s), including the Application Services or System(s), in whole or in part, provided under this Agreement or any Purchasing Instrument(s) if the State reasonably determines that such Services or Deliverable(s) have not been satisfactorily or completely delivered or performed, or that such Services or Deliverable(s) fails to meet or conform to any applicable Acceptance Criteria or Specifications or that there is a material Deficiency or Error with respect to such Deliverable(s) or Services.
- 4.4. Effect of Purchasing Instruments. In no event shall the State be obligated to pay Vendor any fees, costs, compensation, or other amounts in excess of the amounts consistent with the RFP or the Proposal for any Services or Deliverable(s), including the Application Services and System(s). In addition, in no event shall the State be obligated to pay Vendor any fees, costs, compensation, or other amounts in excess of the amounts set forth in an applicable Purchasing Instrument or Special Terms and Conditions attached hereto and labeled "Application Services/ System(s) Description and

related Fees," for any one or more Services or Deliverable(s), including the Application Services or System(s), unless the State agrees to pay such fees, costs, compensation, or other amounts pursuant to a duly executed Change Order or written amendment to the applicable Purchasing Instrument or Special Terms and Conditions .

- 4.5. Payment does not imply Acceptance. No payment, including final payment, shall be construed as acceptance of any Services or Deliverables with Deficiencies, Errors, or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the State shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the State.
- 4.6. Invoices. Upon receipt of written notice of Acceptance from the State with respect to one or more Services or Deliverable(s), or in the frequencies set forth in the applicable Purchasing Instrument or, in the case of the Application Services and System(s), in the Special Terms and Conditions attached hereto and labeled "Application Services/System(s) Description and related Fees," Vendor shall submit an invoice to the State requesting payment of the fees or other compensation to which it is entitled under Section 4.1(Pricing/Compensation), less any Retained Amount(s) to be withheld in accordance with Section 4.7 (Retention) or other applicable offsets. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges, or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the State. The State shall verify Vendor's performance/provisioning of Services or Deliverable(s) outlined in the invoice before making payment. The State shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code section 8A.514 and corresponding implementing rules, regulations, and policies. The State may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the State shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the State believes the invoice is inaccurate or incorrect in any way.
- 4.7. Retention. To secure Vendor's performance under this Agreement, the State may retain 15% of the fees or other compensation associated with each Deliverable provided under a Purchasing Instrument ("**Retained Amounts**") until all Deliverables under such Purchasing Instrument have been supplied/provided and the State has given its Final Acceptance. Retained Amounts shall be payable upon the State's delivery of written notice of Final Acceptance, subject to the terms and conditions hereof.
- 4.8. Erroneous Payments and Credits. Vendor shall promptly pay or refund to the State the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Vendor or notification by the State of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the State under this Section 4.8 (Erroneous Payments and Credits), the State may charge interest of one percent (1%) per month compounded on the

outstanding balance each month after the date payment or refund is due, or the maximum amount otherwise allowed by law, whichever is greater. The State may, in its sole discretion, elect to have Vendor apply any amounts due and owing the State under this Section 4.8 (Erroneous Payments and Credits) against any amounts payable by the State under this Agreement.

- 4.9. Set-off Against Sums Owed by Vendor. In the event Vendor owes the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the State may set off such sum against any sum invoiced to the State by Vendor in the State's sole discretion. Any amounts due the State as damages may be deducted by the State from any money or sum payable by the State to Vendor pursuant to this Agreement or any other agreement between Vendor and the State.
- 4.10. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the State may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the State or work stoppage by Vendor, in the event the State determines:
- 4.10.1. Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or
- 4.10.2. Any Deliverable, the Application Services, or System(s) has failed to meet or conform to any applicable Acceptance Criteria or Specification(s) or contains or is experiencing a material Deficiency or Error(s).

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

- 4.11. Correction/Cure. The State may correct any Deficiencies or Errors with respect to any Deliverable(s), the Application Services, or System(s), or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies or Errors as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the State. The State may procure the Deliverable(s) reasonably necessary to correct any Deficiencies or Errors or cure any Vendor default, in which event Vendor shall reimburse the State for the actual costs incurred by the State for such Deliverable(s) or cure, including the reasonable value of the time expended by the State's personnel or its Authorized Contractors to secure substitute Deliverable(s) or cure such default. In addition, Vendor shall cooperate with the State or any Third Parties retained by the State which assist in curing such default, including by allowing access to any pertinent materials, work product, or intellectual property of Vendor's.
- 4.12. Error Correction. With respect to each notice from the State to Vendor during the Term that notifies Vendor that any Deliverable(s), the Application Services, or System(s) provided by Vendor, including those previously accepted by the State, contains or experiences a Deficiency or Error, Vendor shall, at no cost to the State, promptly correct the Deficiency or Error and repair the affected Deliverable(s), Application Services, or System(s).
- 4.13. Repayment Obligation. In the event that any State of Iowa or federal funds are deferred or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, Vendor will be liable to the State of Iowa for the full amount of any claim

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

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

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

5.1. Acceptance Testing. All Deliverables, the Application Services, and the System(s) shall be subject to the State's Acceptance Testing and Acceptance, as may be further described in a Purchasing Instrument(s). Upon completion of all work to be performed by Vendor with respect to any Deliverable or group of Deliverables, the Application Services, or the System(s), Vendor shall deliver a written notice to the State certifying that the foregoing meets and conforms to applicable Acceptance Criteria and is ready for the State to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable(s), Application Services, and System(s) to determine that it meets and operates in accordance with applicable Acceptance Criteria prior to delivering such notice to the State. At the State's request, Vendor shall assist the State in performing Acceptance Tests. Requests for this support shall be provided via a Change Order. Within a reasonable period of time after the State has completed its Acceptance Testing, the State shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable, the Application Services, or System(s), or any portion thereof, evaluated during such Acceptance Testing. If the State determines that a Deliverable(s), the Application Services, or the System(s), in whole or in part, satisfies its Acceptance Tests, the State shall provide Vendor with notice of Acceptance with respect to such Deliverable(s), the Application Services, and System(s). If the State determines that a Deliverable(s), the Application Services, or System(s), in whole or in part, fails to satisfy its Acceptance Tests, the State shall provide Vendor with notice of Non-Acceptance with respect to such Deliverable(s), the Application Services, and System(s). In the event the State provides notice of Non-Acceptance to Vendor with respect to any Deliverable(s), the Application Services, and System(s), Vendor shall correct and repair such Deliverable(s), the Application Services, and System(s) and submit it to the State within twenty (20) days of Vendor's receipt of notice of Non-acceptance so the State may re-conduct its Acceptance Tests with respect to such Deliverable(s), the Application Services, or System(s). In the event the State determines after re-conducting its Acceptance Tests such Deliverable(s), Application Services, and System(s) continue to fail to satisfy its Acceptance Tests, then the State shall have the continuing right, at its sole option, to:

- 5.1.1. Require Vendor to correct and repair such Deliverable(s), Application Services, and System(s) within such period of time as the State may specify in a written notice to Vendor;
- 5.1.2. Refuse to accept such Deliverable(s), Application Services, or System(s) without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such Deliverable(s), the Application Services, or System(s), or receive a refund of any fees or amounts already paid with respect to such Deliverable(s), Application Services, or System(s);
- 5.1.3. Accept such Deliverable(s), the Application Services, or System(s) on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the State's satisfaction, the Deficiencies or Errors present therein and any reduced value or functionality of such Deliverable(s), the Application Services, or System(s), or the costs likely to be incurred by the State to correct such Deficiencies or Errors; or
- 5.1.4. Terminate the applicable Purchasing Instrument or seek any and all available remedies, including damages. Notwithstanding any other provisions of this Agreement related to termination, the State may terminate a Purchasing Instrument in its entirety pursuant to this Section 5.1.4 without providing Vendor any notice or opportunity to cure.

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

5.2. Project Management and Reporting.

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

meeting date. Travel costs will be charged at-cost, i.e., no mark-up. Standard professional services rates on the Sourcwell contract shall be charged for on-site time, and travel time.

- 5.2.2. Review Meetings. Vendor's Project Manager shall meet weekly with the State's project manager and representatives, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor or performance issues. At each review meeting, Vendor's Project Manager shall provide a status report, which shall include, at minimum, the information described in Section 5.2.3 (Reports) and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any Party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance of this Agreement. The standard hourly rate for professional services shall be charged for all support provided under this section.
- 5.2.3. Reports. Vendor shall, upon written request, provide the State with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Services or Deliverables, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the State may request. Vendor's proposed format and level of detail for its status reports shall be subject to the State's approval. The standard hourly rate for professional services shall be charged for all support provided under this section.
- 5.2.4. Problem Reporting Omissions. The State's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity the State may have. The State's failure to identify the extent of a problem, Deficiency, or Error, or the extent of damages incurred as a result of a problem, Deficiency, or Error, shall not act as a waiver of performance or constitute Acceptance under this Agreement.

6. Ownership and Intellectual Property.

- 6.1. Ownership of Vendor-Owned Deliverables. Except as specifically granted in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Vendor shall own all Deliverables that were independently and exclusively developed by Vendor prior to the Effective Date of this Agreement ("Vendor-Owned Deliverables"). Further, except where a more specific grant of license is set forth in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, with respect to all Deliverables, the grant of license set forth in Section 3.2.1 (Grant of License) shall extend to all Vendor-Owned Deliverables provided hereunder.
- 6.2. Ownership and Assignment of Customer-Owned Deliverables. Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably assigns, transfers, and conveys to the State all right, title and interest in and to Customer-Owned Deliverables. Vendor represents and warrants that the State shall

acquire good and clear title to all Customer - Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including Vendor Contractors and Vendor Personnel. Vendor, Vendor Contractors, and Vendor Personnel shall not retain any property interests or other rights in or to Customer-Owned Deliverables and shall not use any Customer-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the State commissioning such Deliverables and the payment of such royalties or other compensation as the State deems appropriate. Immediately upon the request of the State, Vendor will deliver to the State or destroy, or both, at the State's option, all copies of any Customer-Owned Deliverables in the possession of Vendor.

- 6.3. Waiver. To the extent any of Vendor's, Vendor Contractor's, or any Vendor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to Customer-Owned Deliverables.
- 6.4. Acknowledgement. Vendor acknowledges and agrees that the State, as owner and assignee of Customer-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation:
 - 6.4.1. Obtain, secure, file and apply for any legal protection necessary to secure or protect any rights in and to Customer-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto;
 - 6.4.2. Adapt, change, modify, edit, or otherwise use Customer-Owned Deliverables as the State sees fit, including in combination with the works of others, prepare derivative works based on Customer-Owned Deliverables, and publish, display, perform, host, and distribute throughout the world any Customer-Owned Deliverable(s) in any medium, whether now known or later devised, including any digital or optical medium; and
 - 6.4.3. Make, use, sell, license, sublicense, lease, or distribute Customer-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party, including Vendor Contractors or Vendor Personnel.
- 6.5. Further Assurances. At the State's request, Vendor will (both during and after the termination or expiration of this Agreement) execute and deliver such instruments, provide all facts known to it, and take such other action as may be requested by the State or State to:
 - 6.5.1. Establish, perfect, or protect the State's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 6.2 (Ownership and Assignment of Customer-Owned Deliverables); and
 - 6.5.2. Obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any

extensions or renewals thereof.

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

- 6.6. Third Party Intellectual Property. Except as otherwise agreed to by the Parties in writing, in the event a Deliverable(s) is comprised of Third-Party Intellectual Property, Vendor shall ensure such Deliverable(s) is licensed to the State pursuant to a license agreement, the terms and conditions of which are acceptable to the State. Unless otherwise agreed to by the State in writing, such license shall be an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the Third-Party Intellectual Property, and to authorize others to do the same on the State's behalf, including its Authorized Contractors.
- 6.7. Rights of the Federal and State Government. If all or a portion of the funding used to pay for Customer-Owned Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights, including a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes, the Customer-Owned Deliverables developed under this Agreement and the copyright in and to such Customer-Owned Deliverables.
- 6.8. Customer Property. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement. Customer Property shall at all times remain the property of the State or applicable Third-Party owning Customer Property that has been licensed to the State. Vendor, Vendor Contractors, Vendor Personnel and the Application Services, System(s), or related Deliverables shall comply with any and all the license terms, conditions, or restrictions applicable to any Customer Property that has been licensed to the State or otherwise made available or accessible to the State or Vendor by a Third Party, including to the extent the Application Services, System(s), or related Deliverables must interface, integrate, or connect to such Customer Property. Vendor shall indemnify and hold harmless the State and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Vendor's, Vendor Contractor's, or Vendor Personnel's, or the Application Services, System(s), or related Deliverables breach of any license terms, conditions, or restrictions applicable to, or violation or misappropriation of any intellectual property rights or interests in, any Customer Property that has

been licensed to the State or otherwise made available or accessible to the State or Vendor by a Third Party.

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

7. Representations, Warranties, and Covenants.

- 7.1. Deliverables Free of Deficiencies. Vendor represents and warrants that the Deliverables, Application Services, and System(s), in whole and in part, shall: (i) be free from material Deficiencies and Errors; and (ii) meet, conform to and operate in accordance with all Acceptance Criteria and in accordance with this Agreement. During the Term, Vendor shall, at its expense, repair, correct, or replace any Deliverable(s), the Application Services, and System(s) that contains or experiences material Deficiencies or Errors or fails to meet, conform to, or operate in accordance with Acceptance Criteria or Specification(s). Repairs, corrections, or replacement shall occur within ten (10) days of receiving notice of such Deficiencies, Errors, or failures from the State or, if not feasible outside of a full system release, shall occur in the very next system release possible. The foregoing shall not constitute an exclusive remedy under this Agreement, and the State shall be entitled to pursue any other available contractual, legal, or equitable remedies. Vendor shall be available at all reasonable times to assist the State with questions, problems, and concerns about the Deliverable(s), the Application Services, and System(s); to inform the State promptly of any known Deficiencies or Errors in any Deliverable(s), the Application Services, and System(s); repair and correct any Deliverable(s), the Application Services, and System(s) not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable(s), the Application Services, and System(s) may have been accepted by the State; and provide the State with all necessary materials and any related Services with respect to such repaired or corrected Deliverable(s), the Application Services, and System(s). Acceptance Testing will not in any way relieve Vendor of its responsibilities to correct any material Deficiency or Error.
- 7.2. Fitness for Intended Purpose. Vendor represents and warrants that it is fully aware of the State's requirements and intended purposes and uses for the Deliverables, the Application Services, and System(s), including as may be further identified or defined in a subsequent Purchasing Instrument executed hereunder, and that the Deliverables, Application Services, and System(s) shall satisfy such requirements, including all Specifications, in all material respects and are fit for their intended purposes and uses.
- 7.3. Quiet Enjoyment. Vendor represents and warrants that: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide Deliverables, the Application Services, and System(s) to the State hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed the State hereunder without violating any rights of any Third Party; (ii) it has not previously and will not grant any rights

in any Deliverables, the Application Services, and System(s) to any Third Party that are inconsistent with the rights granted to the State herein; and (iii) the State shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables, the Application Services, and System(s) without suit, disruption or interruption.

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

standard. So long as the State notifies Vendor of any Services performed in violation of this standard, Vendor shall re-perform the Services at no cost to the State, such that the Services are rendered in the above-specified manner, or if Vendor is unable to perform the Services as warranted, Vendor shall reimburse the State any fees or compensation paid to Vendor for the unsatisfactory Services.

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

- 7.6.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and corresponding rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State's written request, Vendor shall submit to the State a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11-121.
- 7.6.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
- 7.6.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 7.6.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 7.6.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.1, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
- 7.6.6. All applicable I.T. Governance Document(s).
- 7.6.7. To the extent a portion of the funding used to pay for the Deliverables, Application Services, or System(s) is being provided through a grant from the federal government, any terms or conditions required to be included in a contract between the State and a contractor pursuant to applicable federal laws, regulations, circulars, and bulletins, which terms and conditions are incorporated by reference into this Agreement as if fully set forth herein and contractual obligations of Vendor.
- 7.6.8. IRS Pub 1075.

Vendor shall take such steps as necessary to ensure Vendor Contractors and Vendor Personnel are bound by the terms and conditions contained in this Section 7.6 (Compliance with Law). Notwithstanding anything in this Agreement to the contrary, Vendor, Vendor Contractors, and Vendor Personnel's failure to fulfill any requirement set forth in this Section 7.6 (Compliance with Law) shall be regarded as a material breach of this Agreement the State may cancel, terminate, or

suspend, in whole or in part, this Agreement or any Purchasing Instruments executed hereunder. In addition, the State may declare Vendor or Vendor Contractors ineligible for future State contracts in accordance with authorized procedures or Vendor or Vendor Contractors may be subject to other sanctions as provided by law or rule.

- 7.7. No Conflicts. Vendor represents, warrants, and covenants that no relationship existed at the time of the formation of this Agreement, or will exist during the Term of the Agreement, between Vendor, Vendor Contractors, or Vendor Personnel and the State or the State of Iowa or any of its employees or Authorized Contractors that is or may constitute a conflict of interest or appearance of impropriety, or that would conflict in any manner or degree with the performance of its obligations under this Agreement. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement and any Purchasing Instruments executed hereunder, and Vendor, Vendor Contractors, and Vendor Personnel shall not engage in or permit any Third Party to engage in any conduct that would violate that chapter.
- 7.8. Up to Date on Payments. Vendor represents and warrants it is not in arrears with respect to the payment of any monies due and owing the State of Iowa, including the payment of taxes and employee benefits, and covenants and warrants it will not become so during the Term, or any extensions thereof.
- 7.9. Documentation. Vendor represents, warrants and covenants that during the Term, all Documentation will accurately reflect the operation of any Deliverable(s), the Application Services, and System(s) to which the Documentation pertains, and the Documentation will enable the State to use such Deliverable(s), the Application Services, and System(s) for their intended purposes.
- 7.10. Preservation of Implied Warranties. All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the Services, Deliverables, Application Services, or System(s) to be provided, or by provision of samples to the State, shall not be construed as limiting or negating any warranty provided by law, including warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Services, Deliverables, Application Services, or System(s) provided by Vendor or performance or provisioning thereof.
- 7.11. Cumulative Warranties. Except to the extent otherwise provided herein, Vendor's warranties provided in this Section 7 (Representations, Warranties, and Covenants) are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the State.
- 7.12. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 7 (Representations, Warranties, and Covenants) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the State or its Authorized Contractors.

8. Indemnification.

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

- 8.1.1. Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor, directly or indirectly, of any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or misleading;
- 8.1.2. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, Vendor Contractors, or Vendor Personnel;
- 8.1.3. Vendor's, Vendor Contractor's, or Vendor Personnel's performance or attempted performance of this Agreement;
- 8.1.4. Vendor, Vendor Contractors, or Vendor Personnel's failure to comply with any applicable local, state, and federal laws, rules, ordinances, regulations, standards, or orders in the performance of this Agreement, including Pub 1075;
- 8.1.5. Any failure by Vendor or Vendor Contractors to make all reports, payments, withholdings, or provide any insurance required by federal and state law, including with respect to Social Security, workers compensation, employee income, the Affordable Care Act, and other taxes, fees, or costs required by Vendor or Vendor Contractors to conduct business in the State;
- 8.1.6. Any claim involving any personal injury or damage to property, including Customer Property, caused, in whole or in part, by Vendor, Vendor Contractors, or Vendor Personnel related to the work performed or any Deliverables, the Application Services, or System(s) provided under this Agreement, including any Security Breach;
- 8.1.7. Vendor's, Vendor Contractor's, or Vendor Personnel's breach of any license terms, conditions, or restrictions applicable to, or violation or misappropriation of any intellectual property rights or interests in, any Customer Property that has been licensed to the State or otherwise made available or accessible to the State or Vendor by a Third Party;
- 8.1.8. Any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation, or security, including any Security Breach caused, in whole or in part, by Vendor, Vendor Contractors, or Vendor Personnel;

- 8.1.9. Any claim for wages, benefits, compensation, insurance, discrimination, or other similar claims asserted against the State by any Vendor Personnel, or any claim, penalties, or fines made, levied, assessed, or imposed by another Governmental Entity against the State in any way related to or involving the misclassification of employees as independent contractors or any allegations or findings of the existence of a joint -employment relationship involving any Vendor Personnel; or
- 8.1.10. Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of any Third Party, including any claim that any Deliverable(s), the Application Services, the System(s), or any use, access to, or the exercise of any rights with respect to any of the foregoing ("**Indemnified Items**") infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party (collectively "**Claim(s)**").

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

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

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

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

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

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

9. **Default and Termination.**

9.1. **Termination for Cause by the State.** The State may terminate this Agreement or a Purchasing Instrument(s) upon written notice of Vendor's breach of any material term, condition or provision of this Agreement or the applicable Purchasing Instrument, if such breach is not cured within the time period specified in the State's notice of breach or any subsequent notice or correspondence delivered by the State to Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for any damages, including any

liquidated damages. In addition, the State may terminate this Agreement or Purchasing Instrument effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

- 9.1.1. Vendor, directly or indirectly, furnished any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete;
- 9.1.2. Vendor's or Vendor Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 9.1.3. Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;
- 9.1.4. Vendor terminates or suspends its business;
- 9.1.5. Vendor's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;
- 9.1.6. Vendor or Vendor Personnel has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations, standards, or orders when performing within the scope of this Agreement; or
- 9.1.7. The State determines or believes Vendor has engaged in conduct that has or may expose the State to material liability;
- 9.1.8. Vendor or any Deliverable(s), the Application Services, or the System(s) infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or misappropriates or allegedly misappropriates a trade secret; or
- 9.1.9. Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder, or entity having or owning a controlling interest in Vendor:
 - 9.1.9.1. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization (excluding Vendor's near-term, planned changing of Corporate domicile from California to Delaware, i.e., transitioning a California-based C-Corp to a Delaware-based C-Corp with no change in ownership), or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect;
 - 9.1.9.2. Filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - 9.1.9.3. Consenting to any relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy,

insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

- 9.1.9.4. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- 9.1.9.5. Making an assignment for the benefit of
- 9.1.9.6. creditors;
- 9.1.9.7. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or
- 9.1.9.8. Taking any action to authorize any of the foregoing.

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

- 9.2. Termination for Cause by Vendor. Vendor may only terminate an applicable Purchasing Instrument upon 1) 120 days' written notice of an inability to perform in accordance with terms and provisions of the Purchasing Instrument, or 2) written notice of the breach by the State of any material term, condition, or provision of this Agreement related thereto, if such breach is not cured within sixty (60) days of the State's receipt of Vendor's written notice of breach.
- 9.3. Termination for Convenience. Following thirty (30) days written notice, the State may terminate this Agreement or a Purchasing Instrument, in whole or in part, for convenience without the payment of any penalty or incurring any further obligation or liability to Vendor. Termination for convenience may be for any reason or no reason at all.
- 9.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, the State shall, upon written notice, have the right to terminate this Agreement or a Purchasing Instrument, in whole or in part, without penalty or liability and without any advance notice as a result of any of the following:
 - 9.4.1. The legislature, governor, or other applicable governing body fail in the sole opinion of the State to appropriate funds sufficient to allow the State to either meet its obligations under this Agreement or the applicable Purchasing Instrument or to operate as required and to fulfill its obligations under this Agreement or the applicable Purchasing Instrument;
 - 9.4.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the State to make any payment hereunder are insufficient or unavailable for any other reason as determined by the State in its sole discretion;
 - 9.4.3. If the State's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified;
 - 9.4.4. If the State's duties, programs, or responsibilities are modified or materially altered; or
 - 9.4.5. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the State's ability to fulfill any of its obligations under this Agreement or the applicable Purchasing Instrument.

9.5. Limitation of Payment Obligations. In the event of a termination of this Agreement or a Purchasing Instrument for any reason (except for termination by the State pursuant to Section 9.1 (Termination for Cause by the State)), the State shall pay only those amounts, if any, due and owing to Vendor for Services, Deliverables, the Application Services, or the System(s) for which Acceptance has been provided by the State up to and including the date of termination of this Agreement or the applicable Purchasing Instrument and for which the State is otherwise obligated to pay pursuant to this Agreement; provided however, that the State's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 9.5 (Limitation of Payment Obligations) in no way limits the rights or remedies available to the State and shall not be construed to require the State to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts otherwise withheld by the State in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, the State shall not be liable, under any circumstances, for any of the following:

- 9.5.1. The payment of unemployment compensation to Vendor Personnel;
- 9.5.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
- 9.5.3. Any costs incurred by Vendor, Vendor Contractors, or Vendor Personnel in the performance of the Agreement, including startup costs, overhead or other costs associated with the performance of the Agreement;
- 9.5.4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement; or

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

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

- 9.6.1. Except as otherwise directed by the State pursuant to Section 9.6.6, cease work under this Agreement or the applicable Purchasing Instrument and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, within thirty (30) days of the date of notice of termination, expiration, or request, describing the status of all work performed under the Agreement and such other matters as the State may require.
- 9.6.2. As directed by the State, immediately cease using and return to the State any Customer Property provided by the State, directly or indirectly, to Vendor or Customer-Owned Deliverables prepared or developed by Vendor for the State hereunder.
- 9.6.3. Comply with any directions related to Vendor's destruction or return of Customer Data in accordance with Section 10.1.2 (Destruction or Return of Customer Data).
- 9.6.4. Immediately return or refund to the State any payments made by the State for Deliverables, Services, the Application Services, or System(s) that were not rendered or provided by Vendor, including as it relates to any pre-paid fees.
- 9.6.5. Immediately deliver to the State any and all Deliverables, including Customer Owned Deliverables, Software, Source Code, or Documentation, for which the State has a property interest that is in the possession of or under the control of Vendor, Vendor Contractors, or Vendor Personnel in whatever stage of development or form at the time of such termination, expiration, or request.
- 9.6.6. Continue to perform and provide such Services, Deliverables, Application Services, or System(s) under this Agreement as the State may request for a transition period of up to 365 days from the effective date of such termination or expiration. As part of such request, initiated via the Change Order process described in this agreement, the State will inform Vendor of the number of days during which Vendor will perform or provide transition and other related Services, Deliverables, Application Services, or System(s) ("Transition Period"). During the Transition Period, Vendor will take all actions as may be necessary or requested by the State to accomplish a complete and timely transition of the Services, Deliverables, Application Services, or System(s) from Vendor to the State or to any Authorized Contractor hired or utilized by the State to provide any replacement or similar Services, Deliverables, Application Services, or System(s) ("New Contractor"). Vendor will use its best efforts to cooperate with the State and any New Contractor, and to fully comply with all requests of the State or the New Contractor to effect a smooth and timely transition and to ensure there is no interruption of any Services, Deliverables, Application Services, or System(s). Vendor agrees that it will perform all transition services in good faith and in a professional and businesslike manner and shall comply with all reasonable requests of the State or any New Contractor to assist in the effort to accomplish a successful, seamless and unhindered transition and transfer of Vendor's responsibilities under this Agreement or applicable Purchasing Instrument(s). During the Transition Period,

and solely to the extent there are legally available funds to do so, the State agrees to pay Vendor any fees to which Vendor would be entitled under this Agreement for Services, Deliverables, the Application Services, or System(s) performed or provided during such period; provided this Agreement was not terminated pursuant to Section 9.1 (Termination for Cause by the State) and Vendor continues to be in full compliance with all terms and conditions of this Agreement during the Transition Period. In the event the State's request for transition assistance does not require Vendor to continue providing all of the Services, Deliverables, Application Services, or System(s) under this Agreement or applicable Purchasing Instrument, the Parties will negotiate in good faith an equitable downward adjustment in the fees which are otherwise payable to Vendor.

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

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

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

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

9.7.1.2. 6 (Ownership and Intellectual Property);

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

9.7.1.4. 8 (Indemnification);

9.7.1.5. 9 (Term and Termination);

9.7.1.6. 10 (Confidentiality);

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

9.7.1.8. 12 (Contract Administration).

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

10. Confidentiality.

10.1. Vendor's Treatment of Confidential Information.

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

Application Services, or System(s) to fulfill their obligations under this Agreement or is otherwise approved by the State in writing. Vendor will immediately report the unauthorized disclosure of Customer Data to the State.

10.1.2. *Destruction or Return of Customer Data.* On the State's written request, Vendor will promptly:

10.1.2.1. After providing notice to the State and subject to its prior written approval, return or destroy, at the State's option, all Customer Data; and

10.1.2.2. Provide a notarized written statement to the State certifying all Customer Data has been returned or destroyed to the State.

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

10.1.3. *Compelled Disclosures.* To the extent required by applicable law or by lawful order or requirement of a court or governmental authority of competent jurisdiction over Vendor, Vendor may disclose Customer Data to a Third Party in accordance with such law, order, or requirement, subject to the following conditions:

10.1.3.1. As soon as becoming aware of such law, order, or requirement, and no-less-than five (5) business days prior to disclosing Customer Data pursuant thereto, Vendor will notify the State in writing, specifying the nature of and circumstances surrounding the contemplated disclosure, and forward any applicable process, including a subpoena, to the State for its review.

10.1.3.2. Vendor will consult with the State on the advisability of taking steps to resist or narrow any required response or disclosure.

10.1.3.3. Vendor will use best efforts not to release Customer Data pending the outcome of any measures taken by the State to contest, oppose, or otherwise seek to limit such disclosure by Vendor or any Third Party ultimately obtaining such Customer Data. Vendor will cooperate with and aid the State regarding such efforts.

10.1.3.4. Solely to the extent Vendor is required to disclose Customer Data to a Third Party, Vendor will furnish only such portion of Customer Data as it is required to disclose and will exercise best efforts to obtain an order or other reliable assurance that any Customer Data disclosed will be held in confidence by any Third Party to which it is disclosed.

Notwithstanding any such compelled disclosure by Vendor, such compelled disclosure will not otherwise affect Vendor ' s obligations hereunder with respect to Customer Data ultimately disclosed to a Third Party.

10.2. Treatment of Vendor's Confidential Information.

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

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

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

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

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

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

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

Prior to disclosing any of Vendor' s Confidential Information as permitted above, the State shall provide reasonable notice to Vendor of the circumstances giving rise to such disclosure. Vendor agrees to indemnify and hold harmless the State and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever (including the reasonable value of time of the Attorney General's Office and the

costs, expenses and attorney fees of other counsel retained by or on behalf of the State) arising out of, resulting from, or in any way related to any judgments or damages awarded against any of the foregoing entities or individuals in favor of a Third Party requesting any of Vendor's Confidential Information against the State or any such entities or individuals.

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

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

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

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

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

11.1.1. Implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, theft,

or modification of or to Customer Data, Customer Property, the Application Services, System(s), or any related Deliverables. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53 Revision4 and ISO27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard their own Confidential Information of like importance. In addition, such security measures, to the extent applicable, shall comply with, and shall enable the State to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, policies, or procedures ordinances, codes, regulations, and orders related to such security measures or other security, privacy, or safeguarding requirements, including applicable I.T. Governance Document(s).

- 11.1.2. All Customer Data shall be encrypted at rest and in transit with controlled access and the Application Services, System(s), and any related Deliverables shall use TLS 1.2 or higher. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor, Vendor Contractors, and Vendor Personnel are responsible for encryption of Customer Data in their possession. Additionally, Vendor shall ensure hard drive encryption consistent with valid ated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless the State approve s in writing the storage of Customer Data on a portable device that does not satisfy these standards.
- 11.1.3. Storage, Processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America. Vendor shall not allow Vendor Personnel to store, Process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.
- 11.1.4. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support. Vendor may not provide technical user support on a 24/7 basis using a Follow-the-Sun model.

11.2. Additional Hosting Terms.

- 11.2.1. Import and Export of Data. The State or its Authorized Contractors shall have the ability to import or export data or information, including Customer Data, in whole or in part to or from the System(s) at no charge, and in such formats as may be acceptable to the State, without interference from Vendor using capabilities provided in the Vendor's product or Customer-owned enhancements. In the event the State is unable to successfully import or export data and information in whole or in part using the system's capabilities, Vendor shall assist the State in doing so using the Change Order process described in this agreement. As it relates to the export of such data and information, Vendor shall provide to or ensure the State has obtained an export of any requested data or information within ten {10} days of any request in the format specified by the State.
- 11.2.2. Retention of Customer Data. Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor shall not take any action to intentionally erase any Customer Data until otherwise directed by the State in accordance with Section 10.1.2 Destruction or Return of Customer Data).

11.2.3. *Compliance/Audits.*

- 11.2.3.1. Compliance. Annually throughout the term, Vendor shall obtain and provide the State upon request, at no additional cost:
 - 11.2.3.1.1. A summary of test or assessment results of any independent, Third-Party assessment of application scans using the Open Web Application Security Project (OWASP) Top Ten List, or, alternatively, make source code available for assessments to be performed by the State;
 - 11.2.3.1.2. Test results of a penetration test of the System(s) conducted by an independent, Third Party;
 - 11.2.3.1.3. A copy of Vendor's hosting partner's annual SOC 1 report on the suitability of the design and operational effectiveness controls; and
 - 11.2.3.1.4. A Vendor produced remediation plan resulting from items 11.2.3.1.1 through 11.2.3.1.3, inclusive.
- 11.2.3.2. Ongoing Security Testing. Vendor will periodically test the Application Services, System (s), and related Deliverables for potential areas where security could be breached. During the Term, Vendor will furnish a copy of the test reports, audit reports, or a summary of security framework updates and changes to the State. In addition, Vendor shall disclose its non-proprietary security processes and technical limitations to the State to enable the State to identify compensating controls necessary to adequately safeguard and protect Customer Data. For example, Vendor shall disclose its security processes with respect to virus checking and port sniffing to the State.
- 11.2.3.3. Security Audit. During the Term, the State or its Authorized Contractor(s) may perform security audits/scans of Vendor's environment, including unannounced penetration and security tests. The State's regulators (including any federal agencies providing funds used to pay for the Application Services, System(s), or Deliverables, in whole or in part, or which regulate the security or safeguarding of any Customer Data stored, Processed, or housed in the System(s)) shall have the same right upon request. Vendor agrees to comply with all reasonable recommendations that result from such inspections, test, and audits within reasonable timeframes.
- 11.2.3.4. Access to Security Logs and Reports. Vendor shall provide security logs and reports to the State or its Authorized Contractors in a mutually agreeable form at that does not disclose any non-State information upon request.

11.3. Personnel Safeguards.

11.3.1. *Background Checks.*

11.3.1.1. Floor. Vendor shall conduct nationwide criminal background checks on Vendor Personnel and shall not utilize any such personnel in the performance of this Agreement who have been convicted of any crime of dishonesty, including fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to one (1) year is an authorized penalty.

11.3.1.2. Additional Screening. The State reserves the right to subject Vendor Personnel to additional background checks at any time prior to or during any engagement. Such background checks may include a work history, financial review, request for criminal history data, or local or state criminal history check, national criminal history check through the Federal Bureau of Investigation ("FBI"), or other background check requirement imposed or permitted by law, rule, regulation, order, or policy. Vendor Personnel may be required to authorize the release of the results of criminal history checks, including those through the FBI, to one or more other Governmental Entities. Such background checks may be conducted by the State or its Authorized Contractors. The State may also require Vendor to conduct a work history or financial review of Vendor Personnel. Vendor shall provide the State with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.

11.3.1.3. Vendor shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected that are initiated by Vendor.

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

- 11.3.3. *Security Awareness Training.* Vendor shall promote and maintain an awareness of the importance of securing, safeguarding, and otherwise appropriately handling Customer Property, including Customer Data, among Vendor Personnel.
- 11.3.4. *Separation of Job Duties.* Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Contractors and Vendor Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Property and Customer Data to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Services, Deliverables, the Application Services, and System(s) hereunder.
- 11.3.5. *Non-disclosure/Confidentiality Agreements.* Vendor Personnel may be required to sign the State's standard confidentiality or non-disclosure agreement(s), or other confidentiality or non-disclosure agreement(s), including as may be required by applicable law, rule, regulation, or policy.

11.4. Security Breaches.

- 11.4.1. *Reporting.* Vendor or Vendor Contractors will report to the State within two (2) hours of Vendor's or Vendor Contractor's discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to the State within forty-eight (48) hours of discovery or notification of the actual or suspected Security Breach. Such written confirmation shall include an explanation of the nature of and circumstances surrounding such actual or suspected Security Breach.
- 11.4.2. *Investigations in Response to Actual or Suspected Breach.* Vendor and Vendor Contractors agree, at their sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the State in resolving and mitigating any damage from such actual or suspected Security Breach at Vendor's sole cost. At no additional cost to the State or the State of Iowa, Vendor and Vendor Contractor will fully cooperate with the State and its Authorized Contractors in investigating such actual or suspected Security Breach, including reviewing and assisting in reviewing system, application, and access logs, conducting and assisting in conducting forensic audits of relevant systems, imaging and assisting in imaging relevant media, and making personnel available for interview. On notice of any actual or suspected Security Breach, Vendor and Vendor Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. Vendor and Vendor Contractor will deliver to the State a root cause assessment and future incident mitigation plan and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. Vendor agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless the State specifically requests Vendor do so in writing.
- 11.4.3. *Additional Remedies in the Event of Actual Breach.* Upon the State's determination that a Security Breach involving or relating to Customer Data, the Application Services, System(s), or related Deliverables has occurred, Vendor and Vendor Contractors shall fully cooperate with the State in fully rectifying and responding to such Security Breach. Notwithstanding any provision in this Agreement or any other related agreement to the contrary, Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes,

assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (including the reasonable value of time of the Iowa Attorney General's Office or the costs, expenses and attorney fees of other counsel retained by the State or the State) related to, arising out of, or incurred by or on behalf of the State as a result of, any Security Breach caused directly or indirectly, in whole or in part, by any act, error or omission, negligence, or misconduct of Vendor, Vendor Contractors, or Vendor Personnel, including the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); opening and closing accounts, printing new checks, embossing new cards; forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all other costs associated with corrective or other actions that are taken to mitigate or address the Security Breach. The State shall determine, in its sole discretion, the content and means of delivery of any such notifications or reports. Vendor will reimburse or pay to the State all such expenses, fees, damages, and all other amounts within fifteen (15) business days of the date of any written demand or request delivered to Vendor.

11.5. Disaster Recovery and Business Continuity.

11.5.1. *Creation, Maintenance, and Testing.* Vendor shall maintain a Business Continuity and Disaster Recovery Plan for the Application Services, System(s), and related Deliverables ("**Plan**"), and implement such plan in the event of any unplanned interruption. Upon the State's request, Vendor shall provide the State with a copy of Vendor's current Plan, revision history, and any reports or summaries relating to past testing of the Plan. Vendor shall actively test, review, and update the Plan, at a minimum, at the time of each technology refresh of hardware (approximately every 24 months) that comprises the development, test, or hosting environments. Vendor shall, upon written request, promptly provide the State with copies of all reports and summaries resulting from any testing of the Plan and with copies of any updates to the Plan. All updates shall be subject to the requirements of this Section 11.5 (Disaster Recovery/Business Continuity). Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard the Customer Data and the data processing capability and availability of the Application Services, System(s), and related Deliverables. Additional disaster recovery and business continuity requirements may be set forth in individual Purchasing Instruments.

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

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

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

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

12. General Provisions.

12.1. **Ancillary Agreements and Non-Disclosure Agreements.** Vendor or Vendor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to the State in connection with this Agreement, including executing a Confidential Information Requirements for Vendors addendum as required by Pub 1075. Such Ancillary Agreements shall be attached as Special Terms and Conditions hereto and incorporated by

reference as if fully set forth herein.

- 12.2. Immigration Status. Vendor and Vendor Contractors are responsible for ensuring Vendor Personnel possess and maintain valid Visas for any Vendor Personnel for whom a Visa is required. The State may require Vendor or Vendor Contractors to conduct E-Verify employment-eligibility verifications of Vendor Personnel performing or providing Services or Deliverables hereunder, including any Vendor Personnel who may have access to Customer Property or Customer Data. Vendor shall be responsible for all costs associated with the E-Verify process and shall provide the State with the results of this process in a mutually agreeable form and manner at the time or in intervals as mutually agreed to by the Parties.
- 12.3. No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor, Vendor Contractors, and Vendor Personnel shall not make any media release or other public announcement relating to or referring to this Agreement, a Purchasing Instrument, or the Services or Deliverables provided hereunder without the State's prior written consent. Vendor, Vendor Contractors, and Vendor Personnel shall acquire no right to use, and shall not use, without the State's written consent, the terms or existence of this Agreement, Purchasing Instrument, or the fact of providing Services or Deliverables to the State hereunder or the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the State of Iowa, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; (b) to express or to imply any endorsement of Vendor or Vendor's Services or Deliverables by the State of Iowa; or (c) in any manner other than expressly in accordance with this Agreement.
- 12.4. Independent Contractor. Vendor is an independent contractor performing services for the State.
 - 12.4.1. Vendor, Vendor Contractors, and Vendor Personnel shall not hold themselves out as an employee or agent of the State of Iowa or its related entities.
 - 12.4.2. Except as otherwise expressly provided herein or in a Purchasing Instrument, Vendor or Vendor Contractors shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Vendor Personnel to perform and provide the Services, Deliverables, Application Services, or System(s) hereunder.
 - 12.4.3. Vendor Personnel are not eligible for or otherwise entitled to, and Vendor shall ensure Vendor Personnel never claim they are eligible for or otherwise entitled to, any State employee benefits, including retirement benefits, insurance coverage, or the like.
 - 12.4.4. Vendor Personnel shall not be considered employees of the State of Iowa for any purpose, including for federal or State tax purposes. The State of Iowa will not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned in connection with its performance of this Agreement.
 - 12.4.5. The State shall have no right or authority to direct or control Vendor Personnel with respect to the performance or provisioning of Services or Deliverables under this Agreement, or with respect to any other matter, except as otherwise provided by this Agreement or a Purchasing Instrument. The State is interested only in the results to be

achieved by Vendor under this Agreement and related Purchasing Instruments. The manner and method of performing and providing Services and Deliverables under this Agreement and related Purchasing Instruments shall be under the exclusive control of Vendor, in accordance with the terms and conditions of this Agreement and the applicable Purchasing Instruments(s).

- 12.4.6. During any engagement under this Agreement, Vendor Personnel may perform work on behalf of, and provide deliverables to, Third Parties, and may market and advertise their services to Third Parties, so long as such activities do not: (a) violate any terms or conditions of this Agreement; (b) adversely affect the performance or provisioning of Services or Deliverables hereunder or satisfaction of any other duties, responsibilities, or obligations set forth herein; (c) create an actual or potential conflict of interest; (d) violate any intellectual property rights or interests of the State; (e) expose the State to an increased risk of experiencing a Security Breach or other cyber event.
- 12.4.7. Vendor and Vendor Contractors shall be free to hire employees as is necessary for their business purposes; provided, that such employees providing or provisioning Services or Deliverables hereunder shall satisfy the terms and conditions of this Agreement and any Purchasing Instrument(s) executed hereunder. The Parties acknowledge and agree that the State will not have the authority to hire, fire, supervise, control, or manage any Vendor Personnel.
- 12.4.8. Vendor Personnel shall not receive performance reviews, vocational training, or business cards from the State; shall clearly state in any and all communications related to the performance or provisioning of Services or Deliverables hereunder that they are employees of Vendor or Vendor Contractor, as opposed to employees of the State; and shall not be subject to the State's standard disciplinary practices and procedures.
- 12.5. Amendments. This Agreement may be amended, modified, or replaced from time to time by mutual consent of the State and Vendor. All amendments to this Agreement must be executed by both Parties in writing.
- 12.6. No Third-Party Beneficiaries. Except as otherwise expressly stated herein, there are no Third-Party beneficiaries to this Agreement. This Agreement is intended only to benefit the State and Vendor and their respective successors and permitted assigns and the individuals whose Personal Data is stored, transmitted, or otherwise Processed by the Application Services, System(s), and related Deliverables.
- 12.7. Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non convenience or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State or its officers, directors, employees, officials, and agents, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's designated agent. Vendor appoints the contact in Participating Addendum Section 1.7 as its agent to receive service of process. If for any reason Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the State with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the State. Nothing in this provision will alter the right of the State to serve process in any other manner permitted by law. This Section 12.7 (Choice of Law and Forum) shall survive termination of this Agreement.

- 12.8. Assignment and Delegation. Excluding Vendor's near-term, planned changing of Corporate domicile from California to Delaware, i.e., transitioning a California-based C-Corp to a Delaware-based C-Corp with no change in ownership this Agreement may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that the State may assign, transfer, or convey this Agreement, in whole or in part, to any Governmental Entity that succeeds its duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the State. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the State with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the State. Vendor further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Vendor under this Agreement.

- 12.9. Use of Third Parties.

12.9.1. None of the Services, Deliverables, Applications Services, or System(s) to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party, including Vendor Contractors, without the prior written consent of the State. Such consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the State, whether financial or otherwise. Any subcontract to which the State has consented shall be in writing and shall in no way alter the terms and

conditions of this Agreement. All sub contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the State may deem necessary. Vendor is solely liable for any and all payments that may be due to Vendor Contractors pursuant to any subcontract. Vendor shall indemnify and hold harmless the State and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Vendor's breach of any sub contract into which it enters, including Vendor's failure to pay any and all amounts due to any Vendor Contractor. In addition, the State is not responsible for any failure of any Vendor Contractors to pay any amounts that may be due Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the Services, Deliverables, Application Services, or System(s) performed or provided under this Agreement, the State may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in such manner shall not relieve Vendor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow the State or its designee to access the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Vendor Contractor s. Any act ion of a Vendor Contractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect. The term "**Vendor**" as used in this Agreement shall, unless the context clearly requires to the contrary, be deemed to include Vendor Contractors and Vendor Personnel.

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

- 12.12. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the State and Vendor, failure by the State or Vendor at any time to require performance by the other Party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the Parties hereto.
- 12.13. Notices. Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice (identified below) at the address of the Party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S.

Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the State:

Department of Administrative Services
Randy Worstell, Purchasing Agent
Hoover Bldg., Floor - 3
1305 E. Walnut St.
Des Moines, IA 50319

If to Vendor:

Agile Access Control, Inc.
Edwin Smith, President
14101 Willard Rd., Ste A
Chantilly, VA 50151

- 12.14. Cumulative Rights. The various rights, powers, options, elections, and remedies of the State provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed by law, and shall in no way affect or impair the right of the State to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 12.15. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- 12.16. Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all Vendor Personnel providing Services and Deliverables hereunder are responsive to the State's requirements and requests in all respects, including in accordance with any specific timelines identified in a duly executed Purchasing Instrument.

- 12.17. Authorization. Vendor represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Vendor, enforceable in accordance with its terms.
- 12.18. Successors in Interest. All terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, and legal representatives.
- 12.19. Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the Term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt, and transcribe any pertinent books, documents, or other records of Vendor, whether electronic or optically stored, relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require Vendor Contractors to agree to the same provisions as set forth in this Section 12.19 (Records Retention and Access).
- 12.20. Headings or Captions and Terms. The section headings or captions set forth in this Agreement are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation" or "but not limited to." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 12.21. Multiple Counterparts and Electronic Signatures. This Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents that are executed or may be executed hereunder, including any amendments to any of the foregoing, may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each such document(s) shall constitute an original. Signatures on such documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures, with such scanned and electronic signatures having the same legal effect as original signatures. Such documents may be accepted, executed, or agreed to through the use of an electronic signature in accordance with the Electronic Signatures

in Global and National Commerce Act ("**E-Sign Act**"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act, codified at Iowa Code chapter 5540 ("**UETA**"), or any other applicable state law, rule, policy, standard, directive, or order. Any document accepted, executed, or agreed to in conformity with such laws, rules, policies, standards, directives, or orders will be binding on the signing Party as if it were physically executed. Vendor acknowledges and agrees it will not contest the validity or enforceability of any such document (s), including under any applicable statute of frauds, because they were accepted, signed, or transmitted in electronic form. Vendor further acknowledges and agrees that it will not contest the validity or enforceability of a signed scanned or facsimile copy of any such document(s) on the basis that it lacks an original handwritten signature, or on the basis that the Parties were not signatories to the same counterpart.

- 12.22. Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.
- 12.23. Attachments. The Parties agree that if an Addendum, Attachment, Rider, Schedule, Appendix, or Exhibit is attached hereto by the Parties, and referred to herein, then the same shall be deemed incorporated herein by reference as if fully set forth herein.
- 12.24. Further Assurances and Corrective Instruments. The Parties agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.
- 12.25. Obligations of Joint Entities. If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default of such activities and obligations.
- 12.26. Force Majeure. Neither Party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties. "Force majeure" does not include: financial difficulties of Vendor or Vendor Contractors; claims or court orders that restrict Vendor's or Vendor Contractor's ability to perform or deliver the Services, Deliverables, Application Services, or System(s) contemplated by this Agreement; strikes; labor unrest; supply chain disruptions; internet failure; power failures; hacker attacks; denial of service attacks; virus or other malicious software attacks or infections; or Security Breach. If delay results from a Vendor Contractor's conduct, negligence, or failure to perform, Vendor shall not be excused from compliance with the

terms and obligations of Vendor unless the Vendor Contract or is prevented from timely performance by a "force majeure" as defined in this Agreement. If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the State. The Party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other Party of the occurrence and reason for the delay. The Parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which Vendor's performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

- 12.27. Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.
- 12.28. Right of Inspection/Contract Compliance. Vendor shall allow the State making purchases or its designee to inspect Vendor's books and records at reasonable times in order to monitor and evaluate performance of this Agreement. All subcontracts shall contain provisions which allowing the same. In addition, Vendor agrees that the State or its designee may conduct a complete contract compliance audit at least once annually during the Term of this Agreement and after termination or expiration of this Agreement to determine whether or not Vendor is complying with the terms of this Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations requested by the State or its designee. Vendor shall not impose any charge or fee in connection with any contract compliance audit.
- 12.29. Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The State is exempt from the payment of State sales and other taxes: https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf.
- 12.30. Title to Property. Title to all property, including Customer Property, furnished by the State to Vendor to facilitate the performance of this Agreement and any Customer-Owned Deliverables shall remain the sole property of the State or applicable Third-Party owning Customer Property that has been licensed to the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the State upon the earliest of completion, termination, cancellation of this Agreement or the applicable Purchasing Instrument, or at the State's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided for in this Agreement, Vendor shall not disclose or use such property for any of the following purposes, including pledging or encumbering it; selling or using it for monetary gain; using it to compile mailing lists; solicit business; or pursue other business activities. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the State under this Agreement, or for Customer Property or Customer-Owned Deliverables

purchased and paid for by the State under this Agreement, shall pass to and vest in the State.

- 12.31. Exclusivity. This Agreement is not exclusive. The State may obtain similar or identical Services, Deliverables, Application Services, or System(s) from other vendors.
- 12.32. Award of Related Agreements. The State may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with Authorized Contractors who may be engaged by the State in connection with this Agreement, including complying with any license terms, conditions, or restrictions imposed by such Authorized Contractors in connection with any systems, software, or other intellectual property owned by or licensed by or through such Authorized Contractors and to which Vendor, Vendor Contractors, Vendor Personnel must use or access or with which the Application Services, System(s), or related Deliverables must interface, integrate, or connect. Any reference herein to the State's designee or other like reference shall be deemed to include its Authorized Contractors. Vendor will ensure that any Vendor Contractors or Vendor Personnel will abide by this provision.
- 12.33. Sovereign Immunity. The State, on its own behalf or on behalf of any of its officers, directors, employees, officials, and agents, does not waive sovereign immunity or any other immunity available to it by entering into this Agreement and specifically retains and reserves the defense of sovereign immunity or any other immunity and all defenses available under State and federal laws, rules, and regulations for any claim arising out of or related to this Agreement.
- 12.34. Attorney's Fees and Expenses. In the event Vendor defaults on any of its obligations under this Agreement, Vendor shall pay to the State all costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the State) incurred by the State in enforcing this Agreement or any of its rights and remedies with respect thereto.
- 12.35. Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property, including Customer Property, furnished by the State for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the State's request, restore damaged property to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the State. In addition, at the State's request, Vendor will reimburse the State for any loss or damage to such property caused by Vendor, Vendor Contractor s, or Vendor Personnel. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of the State or State of Iowa.
- 12.36. Survives Termination. This Section 12 (General Provisions) shall survive termination or expiration of the Agreement.