

REQUEST FOR PROPOSAL

RFP COVER SHEET

Administrative Information

RFP Number	RFP1420005033	Title of RFP	Employee Discount Program	
Agency	Iowa Department of Administrative Services (DAS)			
Number of years of the initial term of the contract	1	Number of possible annual extensions	9	
Available to Political Subdivisions?	yes			
State Issuing Officer: Kelli Sizenbach Phone: 515-725-2275 E-mail: kelli.sizenbach@iowa.gov				
Mailing Address: Iowa Department of Administrative Services Hoover State Office Building, Level 3 1305 East Walnut Street Des Moines, IA 50319-0105				
PROCUREMENT TIMETABLE—Event or Action			Date/Time (Central Time)	
State Posts Notice of RFP on TSB website			January 22, 2020	
State Issues RFP			January 24, 2020	
RFP written questions, requests for clarification, and suggested changes from Respondents due			January 31, 2020	
Follow-up RFP written questions, requests for clarification, and suggested changes from Respondents due (no questions accepted or responded to after this date)			February 12, 2020	
Proposals Due			February 21, 2020/3:00 P.M.	
Relevant Websites				
Internet website where Addenda to this RFP will be posted http://bidopportunities.iowa.gov				
Number of Copies of Proposals Required to be Submitted: 1 Original & 1 Digital Copy				
Firm Proposal Terms The minimum number of days following the deadline for submitting proposals that the Respondent guarantees all proposal terms, including price, will remain firm is 120 Days.				

SECTION 1 INTRODUCTION

1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals from Responsible Respondents to provide the goods and/or services identified on the RFP cover sheet and further described in Section 4 of this RFP to the Agency identified on the RFP cover sheet. The Agency intends to award a Contract(s) for the initial period identified on the RFP cover sheet, and the Agency, in its sole discretion, may extend the Contract(s) for up to the number of annual extensions identified on the RFP cover sheet.

1.2 Definitions

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

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

“Contract” means the contract(s) entered into with the successful Respondent(s) as described in Section 6.1.

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

“Deliverable” means the completion of a milestone or accomplishment of a task.

“General Terms and Conditions” means the General Terms and Conditions for Services Contracts as referenced on the RFP cover page.

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

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

“Responsible Respondent” means a Respondent that has the capability in all material respects to perform the scope of work and specifications of the Contract. In determining whether a Respondent is a Responsible Respondent, the Agency may consider various factors including, but not limited to, the Respondent’s competence and qualifications to provide the goods or services requested, the Respondent’s integrity and reliability, the past performance of the Respondent and the best interest of the Agency and the State.

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

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

“State” means the State of Iowa, the Agency, and all state agencies, boards, and commissions, and any political subdivisions making purchases from the Contract as permitted by this RFP.

1.3 Overview of the RFP Process

This RFP is designed to provide Respondents with the information necessary for the preparation of competitive Proposals. The RFP process is for the Agency's benefit and is intended to provide the Agency with competitive information to assist in the selection process. It is not intended to be comprehensive. Each Respondent is responsible for determining all factors necessary for submission of a comprehensive Proposal.

Respondent should review Attachment 3, Form 22 Request for Confidentiality, for more information if its Proposal contains confidential information. Any Proposal marked "Confidential" or "Proprietary" on every page may be disqualified.

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

1.4 Objectives

The State of Iowa objectives are:

- Provide State of Iowa employees and retirees discounts on various goods and services.
- Provide a responsive account team.
- Provide a user friendly, online platform.

1.5 Background

The Iowa Department of Administrative Services (DAS) was created on July 1, 2003, as a way to manage and coordinate the major resources of state government. The DAS mission is to provide high-quality, affordable infrastructure products and services to Iowa state government customers in a manner that empowers them to provide better service to the citizens of Iowa and support the State of Iowa in achieving economic growth. DAS has established an alternative to privatization that provides an incentive to employees to drive down the cost of service delivery. DAS provides services in four business areas: Human Resources, General Services, Central Procurement and State Accounting.

DAS is seeking proposals for a statewide employee discount program. There are currently over 18,000 employees in the State of Iowa, all of which could have access to the proposed discount program. The awarded Respondent will provide access to local and national discounts.

SECTION 2 ADMINISTRATIVE INFORMATION
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2.1 Issuing Officer

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

2.2 Restriction on Communication

From the issue date of this RFP until a Notice of Intent to Award the Contract is issued, Respondents may contact only the Issuing Officer. The Issuing Officer will respond only to written questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted as provided in Section 2. Oral questions related to the interpretation of this RFP will not be accepted. Respondents may be disqualified if they contact any State employee other than the Issuing Officer about the RFP except that Respondents may contact the State Targeted Small Business Office on issues related to the preference for Targeted Small Businesses.

This section shall not be construed as restricting communications related to the administration of any contract currently in effect between a Respondent and the State.

2.3 Downloading the RFP from the Internet

The RFP and any addenda to the RFP will be posted at <http://bidopportunities.iowa.gov/>. The Respondent is advised to check the website periodically for addenda to this RFP, particularly if the Respondent downloaded the RFP from the Internet as the Respondent may not automatically receive addenda. It is the Respondent's sole responsibility to check daily for addenda to posted documents.

2.4 Procurement Timetable

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

2.5 Questions, Requests for Clarification, and Suggested Changes

Respondents are invited to submit written questions and requests for clarifications regarding the RFP. Respondents may also submit suggestions for changes to the specifications of this RFP. The questions, requests for clarifications, or suggestions must be in writing and received by the Issuing Officer on or before the date and time listed on the RFP cover sheet. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, Respondent shall reference the page and section number(s). The Agency will post written responses to questions, requests for clarifications, or suggestions received from Respondents. The Agency's written responses will become an addendum to the RFP. If the Agency decides to adopt a suggestion that modifies the RFP, the Agency will issue an addendum to the RFP.

The Agency assumes no responsibility for oral representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP through an addendum.

2.6 Amendment to the RFP

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

2.7 Amendment and Withdrawal of Proposal

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

2.8 Submission of Proposals

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

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

2.9 Proposal Opening

The Agency will open Proposals after the deadline for submission of Proposals has passed. The Proposals will remain confidential until the Agency has issued a Notice of Intent to Award a Contract. See Iowa Code Section 72.3. However, the names of Respondents who submitted timely Proposals will be publicly available after the Proposal opening. The announcement of Respondents who timely submitted Proposals does not mean that an individual Proposal has been deemed technically compliant or accepted for evaluation.

2.10 Costs of Preparing the Proposal

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

2.11 No Commitment to Contract

The Agency reserves the right to reject any or all Proposals received in response to this RFP at any time prior to the execution of the Contract. Issuance of this RFP in no way constitutes a commitment by the Agency to award a contract.

2.12 Rejection of Proposals

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

- 2.12.1** The Respondent fails to deliver the Cost Proposal in a separate envelope.
- 2.12.2** The Respondent acknowledges that a mandatory specification of the RFP cannot be met.
- 2.12.3** The Respondent's Proposal changes a material specification of the RFP or the Proposal is not compliant with the mandatory specification of the RFP.
- 2.12.4** The Respondent's Proposal limits the rights of the Agency.
- 2.12.5** The Respondent fails to include information necessary to substantiate that it will be able to meet a specification of the RFP as provided in Section 4 of the RFP.
- 2.12.6** The Respondent fails to timely respond to the Agency's request for information, documents, or references.
- 2.12.7** The Respondent fails to include proposal security, if required.
- 2.12.8** The Respondent fails to include any signature, certification, authorization, stipulation, disclosure or guarantee as provided in Section 4 of this RFP.
- 2.12.9** The Respondent presents the information requested by this RFP in a format inconsistent with the instructions of the RFP or otherwise fails to comply with the specifications of this RFP.
- 2.12.10** The Respondent initiates unauthorized contact regarding the RFP with a State employee other than the Issuing Officer.
- 2.12.11** The Respondent provides misleading or inaccurate responses.
- 2.12.12** The Respondent's Proposal is materially unbalanced. A Proposal in which line item prices are structured so that it is possible that the Respondent who appears to be low will not end up having the lowest overall cost to the State, due to high prices on particular line items.
- 2.12.13** There is insufficient evidence (including evidence submitted by the Respondent and evidence obtained by the Agency from other sources) to satisfy the Agency that the Respondent is a Responsible Respondent.
- 2.12.14** The Respondent alters the language in Attachment 1, Certification Letter or Attachment 2, Authorization to Release Information letter.
- 2.12.15** The Respondent is a "scrutinized company" included on a "scrutinized company list" created by a public fund pursuant to Iowa Code section 12J.3.

2.13 Nonmaterial Variances

The Agency reserves the right to waive or permit cure of nonmaterial variances in the Proposal if, in the judgment of the Agency, it is in the State's best interest to do so. Nonmaterial variances include but are not limited to, minor failures to comply that: do not affect overall responsiveness, are merely a matter of form or format, do not change the relative standing or otherwise prejudice other Respondents, do not change the meaning or scope of the RFP, or do not reflect a material change in the specifications of the RFP. In the event the Agency waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP specifications or excuse the Respondent from full compliance with RFP specifications or other Contract specifications if the Respondent is awarded the Contract. The determination of materiality is in the sole discretion of the Agency.

2.14 Reference Checks

The Agency reserves the right to contact any reference to assist in the evaluation of the Proposal, to verify information contained in the Proposal and to discuss the Respondent's qualifications and the qualifications of any subcontractor identified in the Proposal.

2.15 Information from Other Sources

The Agency reserves the right to obtain and consider information from other sources concerning a Respondent, such as the Respondent's capability and performance under other contracts, the qualifications of any subcontractor identified in the Proposal, the Respondent's financial stability, past or pending litigation, and other publicly available information.

2.16 Verification of Proposal Contents

The content of a Proposal submitted by a Respondent is subject to verification. If the Agency determines in its sole discretion that the content is in any way misleading or inaccurate, the Agency may reject the Proposal.

2.17 Proposal Clarification Process

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

2.18 Disposition of Proposals

All Proposals become the property of the State and shall not be returned to the Respondent. Once the Agency issues a Notice of Intent to Award the Contract, the contents of all Proposals will be public records and be available for inspection by interested parties, except for information for which Respondent properly requests confidential treatment according to exceptions provided in *Iowa Code Chapter 22* or other applicable law.

2.19 Public Records and Requests for Confidential Treatment

The Agency's release of public records is governed by Iowa Code chapter 22. Respondents are encouraged to familiarize themselves with Chapter 22 before submitting a Proposal. The Agency will copy and produce public records upon request as required to comply with Chapter 22 and will treat all information submitted by a Respondent as non-confidential records unless Respondent requests specific parts of the Proposal be treated as confidential at the time of the submission as set forth herein **AND the information is confidential under Iowa or other applicable law.**

2.20 Form 22 Request for Confidentiality

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

2.21 Copyright Permission

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

2.22 Release of Claims

By submitting a Proposal, the Respondent agrees that it will not bring any claim or cause of action against the Agency or the State based on Respondent's misunderstanding concerning the information provided in the RFP or concerning the Agency's or the State's failure, negligent or otherwise, to provide the Respondent with complete, pertinent, or accurate information in this RFP, or for any failure to provide information that any Respondent might consider relevant for purposes of making a decision to submit a Proposal or to enter into any Contract resulting from this RFP.

2.23 Respondent Presentations

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

2.24 Evaluation of Proposals Submitted

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

2.25 Award Notice and Acceptance Period

Notice of Intent to Award the Contract(s) will be sent to all Respondents submitting a timely Proposal and may be posted at the website shown on the RFP cover sheet. Negotiation and

execution of the Contract(s) shall be completed no later than thirty (30) days from the date of the Notice of Intent to Award or such other time as designated by Agency. If the successful Respondent fails to negotiate and deliver an executed Contract by that date, the Agency, in its sole discretion, may cancel the award and award the Contract to the remaining Respondent the Agency believes will provide the best value to the State.

2.26 No Contract Rights until Execution

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

2.27 Choice of Law and Forum

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

2.28 Preference

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

2.29 Restrictions on Gifts and Activities

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

2.30 No Minimum Guaranteed

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

2.31 Post Solicitation Debriefing

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

2.32 Appeals

A Respondent whose Proposal has been timely filed and who is aggrieved by the Notice of Intent to Award of the Department may appeal the decision by filing a written notice of appeal (in accordance with 11—Chapter 117.20, Iowa Administrative Code) to: The Director of the Department of Administrative Services, Hoover State Office Building, Des Moines, Iowa 50319-0104 and a copy to the Issuing Officer. The notice must be filed within five (5) days of the date of the Notice of Intent to Award issued by the Department, exclusive of Saturdays, Sundays, and legal state holidays. The written notice may be filed by fax transmission to 515.725.2064. The notice of appeal must clearly and fully identify all issues being contested by reference to the page,

section and line number(s) of the RFP and/or the Notice of Intent to Award. A notice of appeal may not stay negotiations with the apparent successful Respondent.

SECTION 3 FORM AND CONTENT OF PROPOSALS

3.1 Instructions

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

- 3.1.1** The Proposal shall be typewritten on 8.5" x 11" paper and sent in sealed envelope. The Proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal. The Technical Proposal and the Cost Proposal shall be labeled as such and placed in separate sealed envelopes. The envelopes shall be labeled with the following information:

RFP Number: RFP1420005033
RFP Title: Employee Discount Program
Kelli Sizenbach
Iowa Department of Administrative Services
Hoover State Office Building, Level 3
1305 East Walnut Street
Des Moines, IA 50319-0105

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

- 3.1.2** 1 Original & 1 Digital Copy of the Technical Proposal shall be timely submitted to the Issuing Officer in a sealed envelope. The Cost Proposal shall be submitted in a separate sealed envelope.

Technical Proposal Envelope Contents

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

Cost Proposal Envelope Contents

Original Cost Proposal
Cost Proposal on digital media

- 3.1.3** If the Respondent designates any information in its Proposal as confidential pursuant to Section 2, the Respondent must also submit one (1) copy of the Proposal from which confidential information has been excised as provided in Section 2 and which is marked "Public Copy".

- 3.1.4** Proposals shall not contain promotional or display materials.

- 3.1.5** Attachments shall be referenced in the Proposal.

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

3.2 Technical Proposal

Any information provided in the Technical Proposal is subject to consideration for consideration, evaluation, and scoring. The following documents and responses shall be included in the Technical Proposal in the order given below:

Exhibit 1 - Transmittal Letter (Required)

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

Exhibit 2 - Executive Summary

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

- Statements that demonstrate that the Respondent has read and understands the terms and conditions of the RFP including the Contract provisions in Section 6.
- An overview of the Respondent's plans for complying with the specifications of this RFP.
- Any other summary information the Respondent deems to be pertinent.

Exhibit 3 - Firm Proposal Terms

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

Exhibit 4 - Respondent Background Information

The Respondent shall provide the following general background information:

- Does your state have a preference for instate Contractors? Yes or No. If yes, please include the details of the preference.
- Name, address, telephone number, fax number and e-mail address of the Respondent including all d/b/a's or assumed names or other operating names of the Respondent and any local addresses and phone numbers.
- Form of business entity, e.g., corporation, partnership, proprietorship, or LLC.
- Copy of W-9.
- State of incorporation, state of formation, or state of organization.
- The location(s) including address and telephone numbers of the offices and other facilities that relate to the Respondent's performance under the terms of this RFP.
- Number of employees.
- Type of business.
- Name, address and telephone number of the Respondent's representative to contact regarding all contractual and technical matters concerning the Proposal.
- Name, contact information and qualifications of any subcontractors who will be involved with this project the Respondent proposes to use and the nature of the goods and/or services the subcontractor would perform.
- Respondent's accounting firm.
- Awarded Respondent will be required to register to do business in Iowa before payments can be made.
- For Contractor registration documents, go to:
<https://das.iowa.gov/procurement/vendors/how-do-business>

Exhibit 5 - Experience

The Respondent must provide the following information regarding its experience:

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

Exhibit 6 - Termination, Litigation, and Debarment

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

- Has the Respondent had a contract for goods and/or services terminated for any reason? If so, provide full details regarding the termination.
- Describe any damages or penalties assessed against or dispute resolution settlements entered into by Respondent under any existing or past contracts for goods and/or services. Provide full details regarding the circumstances, including dollar amount of damages, penalties and settlement payments.
- Describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Respondent to engage in any business, practice or activity.
- A list and summary of all litigation or threatened litigation, administrative or regulatory proceedings, or similar matters to which the Respondent or its officers have been a party.
- Any irregularities discovered in any of the accounts maintained by the Respondent on behalf of others. Describe the circumstances and disposition of the irregularities. Failure to disclose these matters may result in rejection of the Proposal or termination of any subsequent Contract. The above disclosures are a continuing requirement of the Respondent. Respondent shall provide written notification to the Agency of any such matter commencing or occurring after submission of a Proposal, and with respect to the successful Respondent, following execution of the Contract.

Exhibit 7 - Criminal History and Background Investigation

The Respondent hereby explicitly authorizes the Agency to conduct criminal history and/or other background investigation(s) of the Respondent, its officers, directors, shareholders, partners and managerial and supervisory personnel who will be involved in the performance of the Contract.

Exhibit 8 - Acceptance of Terms and Conditions

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

Exhibit 9 - Certification Letter

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

Exhibit 10 - Authorization to Release Information

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

Exhibit 11 – Mandatory Specifications

The Respondent shall answer whether or not it will comply with each specification in Section 4 of the RFP. Where the context requires more than a yes or no answer or the specific specifications so indicates, Respondent shall explain how it will comply with the specification. Merely repeating the Section 4 specifications may be considered non-responsive and result in the rejection of the Proposal. Proposals must identify any deviations from the specifications of the RFP or specifications the Respondent cannot satisfy. If the Respondent deviates from or cannot satisfy the specification(s) of this section, the Agency may reject the Proposal.

Exhibit 12 – Technical Specifications

- Describe how the discounts can be accessed via the internet.
- Describe how the Respondent will ensure a 99.9% uptime.
- Is the solution mobile responsive?
- Is there a mobile application for this solution?
- Describe the ability to host separate discounts negotiated by the State of Iowa.

Exhibit 13 – Discounts

- Provide a list of discounts the Respondent has already negotiated and will feature with this project.
- Describe the ability to provide the State of Iowa account manager with a list of discounts on a monthly basis.
- Describe how new discounts are promoted or communicated.
- Describe how retirees can be included in the system.
- Describe how the respondent will solicit deals on behalf of the State of Iowa.
- Describe the ability to ensure state-wide discounts are available.

Exhibit 14 – Customer Service

- Describe how the respondent can provide a single point of contact for the State of Iowa.
- Describe the ability to meet with the State of Iowa in person on an annual basis.
- Describe the steps users take to sign up for the discounts.
- Describe how users reset their usernames and passwords.
- Describe the process the Respondent will follow to ensure all artwork is proofed by the Agency.
- Describe the available quarterly reports.
- Describe the ability to respond to customer inquiries within one (1) business day.

Exhibit 15 – Implementation Plan

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

- Identify any third party Respondents involved in Respondent's implementation strategy and describe these relationships.
- Describe the skills and time required by State of Iowa personnel for initial implementation of the proposed system.
- Describe the documentation provided with the product along with applicable costs for any additional documentation.
- Describe Respondent's experience with installations similar in size. Please provide an implementation schedule, based on weekly milestones (not dates).

Exhibit 16 – Optional Features

Provide detailed information for any optional items that may be available. (Include costs for these items in the Cost Proposal)

Exhibit 17 – Service and Maintenance

Provide detailed information on your customer service program and maintenance plans. Include response times and the access to and timeliness of service engineers.

Exhibit 18 - Addendums

Provide signed copy of posted RFP addendums.

Exhibit 19 - Request for Confidentiality

The Respondent must sign and submit with the Proposal the document included as Attachment #3 Form 22 – Request for Confidentiality.

3.3 Cost Proposal

The Respondent shall provide its Cost Proposal in a separately sealed envelope for the proposed goods and/or services. All prices are quoted pursuant to the terms and conditions of this RFP. Respondent's Cost Proposal shall include an all-inclusive, itemized, total cost in U.S. Dollars (including all travel, expenses, etc. in prices) for the proposed services. All pricing to be FOB Destination, freight cost, and all expenses included; and based on Net 60 Days Payment Terms. Cost proposals must include the following:

- Provide any one time and recurring costs for system. Recurring costs are to be for a 6 year period to cover initial term and extensions to contract.
- Equipment costs.
- Any other costs associated with proposed system.
- Pricing for options.

3.3.1 Respondent Discounts

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

3.3.1.1 Prompt Payment Discount

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

3.3.1.2 Cash Discount

The State may consider cash discounts when scoring Cost Proposals.

SECTION 4 SPECIFICATIONS

Overview

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

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

4.1 System Requirements

- 4.1.1** Must be an online platform.
- 4.1.2** Must post discounts procured by the State of Iowa.
- 4.1.3** Must provide employees with a code to sign up in lieu of an eligibility file.

4.2 Respondent Requirements

- 4.2.1** Must provide a one (1) business day response time for customer service issues.
- 4.2.2** The State of Iowa must maintain ownership of all artwork, logos, branding and the like.

4.3 Implementation

Upon award of a Contract for services the Agency shall negotiate an implementation schedule with the successful Respondent.

4.4 Installation

Installation of any equipment and/or software shall be the Respondent’s responsibility and expense, as will be the removal of such equipment and/or software upon completion of the contract or cancellation of the contract. The Respondent shall be responsible for all Respondent-owned equipment. The risk of loss and/or damage to Respondent-owned equipment and/or software shall be fully assumed by the Respondent at all times pertinent to the contract.

4.5 Maintenance and Support Services

- 4.5.1** Facility will perform operational maintenance to the system.
- 4.5.2** Respondent will provide preventative maintenance and inspection on a bi-annual basis.

4.5.3 Respondent will provide same day response time on system issues and outages.

4.6 Training

Respondent will provide general user training and administrator training.

SECTION 5 EVALUATION AND SELECTION
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5.1 Introduction

This section describes the evaluation process that will be used to determine which Proposal(s) provides the greatest value to the State. Agency will not necessarily award the Contract to the Respondent offering the lowest cost to the Agency. Instead, the Agency will award to the Respondent whose Responsive Proposal the Agency believes will provide the best value to the State.

5.2 Evaluation Committee

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

5.3 Technical Proposal Evaluation and Scoring

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

- Answer “Yes” to all parts of Section 4 and include supportive materials as required to demonstrate the Respondent will be able to comply with the Mandatory Specifications in that section and
- Obtain the minimum score for the Technical Proposal. If a Technical Proposal does not meet the minimum score, it will be rejected and the Respondent’s Cost Proposal will not be evaluated.

An addendum identifying the points assigned to the scoring criteria and identifying the minimum score for the Technical Proposal will be posted prior to the RFP closing.

5.4 Cost Proposal Scoring

After the Technical Proposals are evaluated and scored, the Cost Proposals will be opened and scored.

The cost proposal for each respondent will be evaluated in comparison with the other cost proposals received; however, the number of points possible will be proportional to each respondent’s technical evaluation score.

The technical evaluation points received (numerator) is divided by the technical evaluation points possible (denominator) and multiplied by the maximum number of points in the cost evaluation. This provides the total points possible for the respondent in the cost evaluation.

Points Possible for Respondent =
$$\frac{\text{Technical Evaluation Points Received}}{\text{Technical Evaluation Points Possible}} \times \text{Maximum Points in Cost Evaluation}$$

The lowest cost proposal (numerator) is divided by the cost proposal being evaluated (denominator) and multiplied by the points possible for the respondent. This provides the cost evaluation points awarded.

$$\text{Cost Evaluation Points Awarded} = \frac{\text{Lowest Cost Proposal Received}}{\text{Cost Proposal Being Evaluated}} \times \text{Points Possible for Respondent}$$

For example, suppose there are 10 maximum points in the cost evaluation. A respondent that receives 100% of the points possible in the technical evaluation has the opportunity to earn 100% of the points possible in the cost evaluation (e.g., 10 points). If the cost proposal is the lowest cost, the full 10 points will be awarded.

However, a respondent that receives only 50% of the points possible in the technical evaluation has the opportunity to earn only 50% of the points possible in the cost evaluation (e.g., 5 points). If the cost proposal is the lowest cost, only 5 points are awarded, compared to the 10 points that could have been awarded if the respondent had received the highest technical evaluation score.

5.5 Tied Score and Preferences

- 5.5.1** An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the Respondents who are tied in price. Otherwise the drawing will be made in front of at least three non-interested parties. All drawings shall be documented.
- 5.5.2** Notwithstanding the foregoing, if a tied bid involves an Iowa-based Respondent or products produced within the State of Iowa and a Respondent based or products produced outside the State of Iowa, the Iowa Respondent will receive preference. If a tied bid involves one or more Iowa Respondents and one or more Respondents outside the state of Iowa, a drawing will be held among the Iowa Respondents only.
- 5.5.3** In the event of a tied score between Iowa Respondents, the Agency shall contact the Iowa Employer Support of the Guard and Reserve (ESGR) committee for confirmation and verification as to whether the Respondents have complied with ESGR standards. Preference, in the case of a tied bid, shall be given to Iowa Respondents complying with ESGR standards.
- 5.5.4** Second preference in tied scores will be given to Respondents based in the United States or products produced in the United States over Respondents based or products produced outside the United States.
- 5.5.5** Preferences required by applicable statute or rule shall also be applied, where appropriate.

SECTION 6 CONTRACT TERMS AND CONDITIONS

6.1 Contract Terms and Conditions

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

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

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

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

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

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

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

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

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

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

6.2.1 Indemnification

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

6.2.2 Limitation of Liability

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

6.2.3 Jurisdiction and Venue

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

another state, and cannot agree to participate in any form of alternative dispute resolution.

6.2.4 Confidentiality

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

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

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

6.2.6 Payment Terms

6.2.6.1 Payment Methods

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

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

The State of Iowa may make payment by EFT by ACH. Payments are deposited into the financial institution of the claimant's choice three working days from the issue date of the direct deposit.

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

6.2.6.3 State Warrant

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

6.2.6.4 Credit card or ePayables

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

6.2.6.5 Terms and Conditions for State of Iowa Purchasing Cards

The State of Iowa shall pay Contractor's invoices using its Purchasing Card Program (Pcard) whenever possible. The Pcard is a VISA credit card issued by

U.S. Bank to allow authorized employees to make purchases on behalf of the State. It is a faster, more convenient alternative to traditional invoicing and remittance processing, allowing US Bank to pay the Contractor directly, generally within 48 hours of the transaction. Contractor shall comply with security measures for Pcard payments including:

6.2.6.5.1 Contractor shall comply with Payment Card Industry Data Security Standard (PCI DSS) to assure confidential card information is not compromised;

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

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

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

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

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

6.2.6.5.7 Contractor shall shred any documentation with credit card numbers.

6.2.6.6 Payment Terms

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

6.2.6.7 Respondent Discounts

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

6.2.6.8 Prompt Payment Discount

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

6.2.6.9 Invoices

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

6.2.7 Performance Security

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

6.2.8 Quarterly Report

The Contractor shall provide an electronic detailed quarterly report on all sales made under this agreement within the State of Iowa via E-Mail to the Iowa Department of Administrative Services, Central Procurement, Attn: Issuing Officer Name, e-Mail Address. The report file format shall be Microsoft Excel compatible format. The report at minimum shall include the date of sale, customer name and address, full product description, SKU Numbers, quantity, invoice number, unit and extended invoice prices. Respondent proposals must include a sample report and a description of the reporting that will be provided. The State reserves the right to request more detailed information (ad-hoc reporting) at any time and on an individual or specific basis for a specific product, department, time frame, or for a range of products, departments or time frames.

6.3 Order of Precedence

If there is a conflict or inconsistency between any documents comprising the Terms and Conditions, such conflict or inconsistency shall be resolved according to the following priority, ranked in descending order: (1) any terms and conditions specifically set forth in this Section 6 (Contract Terms and Conditions & Administration) under a subsection with a heading entitled Special Terms & Conditions; (2) the General Terms and Conditions for Services Contracts or Goods Contracts to the extent referenced and linked to on the RFP cover page the Contract; (3) if neither the General Terms and Conditions for Service Contracts or Goods Contracts are linked to on the RFP cover page, any terms and conditions attached to and accompanying this RFP as attachment 5 (Terms and Conditions); and (4) any terms and conditions specifically set forth in this Section 6 (Contract Terms and Conditions & Administration) set forth under a subsection with a title other than Special Terms & Conditions.

**Attachment #1
Certification Letter**

(Date) _____

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

Re: RFP1420005033- PROPOSAL CERTIFICATIONS

Dear Kelli Sizenbach:

I certify that the contents of the Proposal submitted on behalf of **(Name of Respondent)** in response to **Iowa Department of Administrative Services** for RFP1420005033 for a XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX are true and accurate. I also certify that Respondent has not knowingly made any false statements in its Proposal.

Certification of Independence

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

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

Certification Regarding Debarment

I certify that, to the best of my knowledge, neither Respondent nor any of its principals: (a) are presently or have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency; (b) have within a five year period preceding this Proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this Proposal had one or more public transactions (federal, state, or local) terminated for cause.

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

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

Pursuant to *Iowa Code sections 423.2(10) and 423.5(8) (2016)* a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under *Iowa Code chapter 423* on all sales of tangible personal property and enumerated services. The Act also requires Respondents to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

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

- ☐ Respondent is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by *Iowa Code chapter 423*; or
- ☐ Respondent is not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in *Iowa Code subsections 423.1(47) and (48)(2016)*.

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

Sincerely,

Signature

Name and Title of Authorized Representative

Date

Attachment #2
Authorization to Release Information Letter

(Date) _____

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

Re: RFP1420005033 - AUTHORIZATION TO RELEASE INFORMATION

Dear Kelli:

(Name of Respondent) hereby authorizes the **Iowa Department of Administrative Services** ("Agency") or a member of the Evaluation Committee to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Respondent in response to RFP1420005033.

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

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

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

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

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

Sincerely,

Signature

Name and Title of Authorized Representative

Date

Attachment #3
Form 22 – Request for Confidentiality
SUBMISSION OF THIS FORM 22 IS REQUIRED

THIS FORM 22 (FORM) MUST BE COMPLETED AND INCLUDED WITH YOUR PROPOSAL. THIS FORM 22 IS REQUIRED WHETHER THE PROPOSAL DOES OR DOES NOT CONTAIN INFORMATION FOR WHICH CONFIDENTIAL TREATMENT WILL BE REQUESTED. FAILURE TO SUBMIT A COMPLETED FORM 22 WILL RESULT IN THE PROPOSAL TO BE CONSIDERED NON-RESPONSIVE AND ELIMINATED FROM EVALUATION. COMPLETE PART 1 OF THIS FORM IF NO INFORMATION PROPOSAL DOES NOT CONTAIN CONFIDENTIAL INFORMATION. COMPLETE PART 2 OF THIS FORM IF THE PROPOSAL DOES CONTAIN CONFIDENTIAL INFORMATION.

1. Confidential Treatment Is Not Requested

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

2. Confidential Treatment of Information is Requested

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

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

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

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

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

Part 1 – No Confidential Information Provided

Confidential Treatment Is Not Requested

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

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

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

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

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

Part 2 - Confidential Treatment is Requested

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

NOTE:

- ***Completion of this Form is the sole means of requesting confidential treatment.***
- ***A RESPONDENT MAY NOT REQUEST PRICING INFORMATION BE HELD IN CONFIDENCE.***

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

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

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

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

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

Company

RFP Number

RFP Title

Signature (required)

Title

Date

**Attachment #4
Response Check List**

RFP REFERENCE SECTION	RESPONSE INCLUDED	
	Yes	No
One (1) original and One (1) electronic copy on digital media.		
One (1) Public Copy with Confidential Information Excised (optional)		
Technical Proposal		
Exhibit 1 - Transmittal Letter		
Exhibit 2 - Executive Summary		
Exhibit 3 - Firm Proposal Terms		
Exhibit 4 - Respondent Background Information		
Exhibit 5 - Experience		
Exhibit 6 - Termination, Litigation, and Debarment		
Exhibit 7 - Criminal History and Background Investigation		
Exhibit 8 - Acceptance of Terms and Conditions		
Exhibit 9 - Certification Letter		
Exhibit 10 - Authorization to Release Information		
Exhibit 11 - Mandatory Technical Specifications		
Exhibit 12 - Technical Specifications		
Exhibit 13 - Discounts		
Exhibit 14 – Customer Service		
Exhibit 15 - Implementation Plan		
Exhibit 16 – Optional Features		
Exhibit 17 - Service and Maintenance		
Exhibit 18 - Warranty		
Exhibit 19 - Addendums		
Exhibit 20 - Request for Confidentiality		

**Department of Administrative Services
Contracts Declaration & Execution ("CD&E")**

Title of Contract: Employee Discount Program (" Agreement ") pursuant to and incorporating by reference Request for Proposal # _____, entitled _____ (" RFP "), available at _____, and Vendor's responsive Proposal thereto dated __-__-__ (" Proposal ").		Contract Number:
State Agency's Name: Department of Administrative Services (" State ")		
Vendor's Name: _____ (" Vendor ").		
Contract to Begin/Effective Date: Start Date	Date of Expiration: End Date	Annual Extensions: Up to Seven (7) Annual One Year Renewals.
<p><u>Documents Incorporated/Order of Precedence.</u> This Agreement, any and all attachments to this Agreement which are incorporated by reference as if fully set forth herein, and the RFP and Proposal which are incorporated by reference as if fully set forth herein, together comprise the terms and conditions governing the relationship between the Parties ("Agreement"). In the case of any conflict or inconsistency between the specific provisions of this Agreement, any and all attachments to this Agreement, or the RFP and the Proposal, such conflict or inconsistency shall be resolved in the following order:</p> <ol style="list-style-type: none"> 1. First by giving preference to any Special Terms and Conditions/Ancillary Agreements addressing compliance concerns; 2. Second by giving preference to the specific provisions of the [Title of Agreement] Agreement; 3. Third by giving preference to specific provisions of the RFP; 4. Fourth by giving preference to the Proposal; 5. Fifth by giving preference to the specific provisions of any Purchasing Instruments (Purchase Order(s)/Statement(s)) executed under the [Title of Agreement] Agreement; 6. Sixth by giving preference to any other Special Terms and Conditions executed under the [Title of Agreement] Agreement. 		

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

Vendor:

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

Printed Name and Title of Person Signing

Address

State of Iowa, acting by and through the Department of Administrative Services

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

Printed Name and Title of Person Signing
[Signatory Name], [State Agency Title]

Address

Department of Administrative Services

This Agreement an Employee Discount Program is made and is effective as of the date identified on the Contract Declarations and Executions Page ("**Effective Date**"), by and between the State of Iowa, acting by and through the Department of Administrative Services ("**State**"), and _____, a corporation organized under the laws of _____ ("**Vendor**"). The parties may be referred to herein individually as a "**Party**" or collectively as the "**Parties**." The Parties agree to the following:

1. Overview

1.1. Purpose

This Agreement establishes the terms and conditions pursuant to which the State may procure an Employee Discount Program, as contemplated by and in accordance with the RFP and as set forth in the Proposal.

1.2. Term

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

2. Definitions

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

"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.

"Acceptance Criteria" means the Specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, or other 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.

"Acceptance Tests" or "Acceptance Testing" means 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 its sole discretion.

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

"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.

“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.

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

“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.

“Customer Property” means any property, whether tangible or intangible, of or belonging to the State, including Customer Data and Customer-Owned Deliverables, 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.

“Customer-Owned Deliverables” means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of 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.

“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).

“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.

“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.

“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.

“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.

“Error Correction” means either a modification, procedure, or routine that corrects an Error in all material respects.

“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.

“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.

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

“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:

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

Which are otherwise generally deemed incidental to the total transaction.

“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:

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

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

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.

“Proposal” or **“Vendor’s Proposal”** means Vendor’s Response to the RFP dated ____-____-____.

“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.

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

“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.

“Services” may include:

The Application Services and System(s).

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

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.

“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.

“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.

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

“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.

“State Users” means the State of Iowa, the Iowa Department of Administrative Services, 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.

“System(s)” means the [identify/describe System(s)], including any underlying or related platforms and infrastructure, and related Deliverables, as may be further defined and described in the RFP, Proposal, Special Terms and Conditions attached hereto and labeled “Application Services/System(s) Description and related Fees,” and related Purchasing Instruments,” including

any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the State's specific needs or use.

"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.

"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:

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);

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.

"Third Party Software" means any software owned or licensed by a Third Party as identified and described in Exhibit A.

"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.

"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.

"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 herein or in a Service Level Agreement attached as Special Terms and Conditions

hereto, performance standards, monitoring, and review provisions applicable to specific projects are as set forth in the applicable Purchasing Instrument.

3.1.2. Purchasing Instruments

3.1.2.1. Generally

The 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 within five (5) business days of receiving 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 freight, shipping, handling, and insurance costs for the delivery and shall bear all risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.

3.1.3.2. Documentation

Vendor acknowledges and agrees that it or Vendor Contractors shall, at no charge to the 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 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, use and, to the extent applicable, maintain and support, the Application Services, System(s), and related Deliverables; and (ii) access, use, reproduce and distribute Documentation.

3.2.2. Implementation/Configuration

Vendor will implement, modify, and configure the Application Services, System(s), and related Deliverables to satisfy the 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.

3.2.3. Not Required to Accept or Install Enhancements

Vendor shall not condition the State's rights or Vendor's obligations under this Agreement, or any other contract, on the State accepting or installing any Enhancements related to the Application Services, System(s), or related Deliverables.

4. Compensation and Additional Rights and Remedies

4.1. Pricing/Compensation

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

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

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

Failure of the 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:

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

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

4.13. Repayment Obligation

In the event that any State of Iowa or federal funds are deferred or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, Vendor will be liable to the 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 at no additional cost to the State. 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 ten (10) 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 shall 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.

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.

5.2.3. Reports

Vendor shall 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.

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 or 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 Deliverables 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) within ten (10) days of receiving notice of such Deficiencies, Errors, or failures from the State. 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 Indemnatee) 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)**").

8.2. Infringement Claim Additional Remedy

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

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

8.2.2. Immediately procure for the 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.

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

8.4. Vendor's duties, obligations, and liabilities as set forth in this Section 8 (Indemnification) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the 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, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect;

- 9.1.9.2.** Filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
- 9.1.9.3.** Consenting to any relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
- 9.1.9.4.** Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- 9.1.9.5.** Making an assignment for the benefit of creditors;
- 9.1.9.6.** Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or
- 9.1.9.7.** Taking any action to authorize any of the foregoing.

The right to terminate this Agreement or applicable Purchasing Instrument pursuant to this Section 9.1 (Termination for Cause by the 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 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, 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 assurances 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 Revision 4 and ISO27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard their own Confidential Information of like importance. In addition, such security measures, to the extent applicable, shall comply with, and shall enable the 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 validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless the State approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.

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

11.1.4. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support. Vendor 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. In the event the State is unable to successfully import or export data and information in whole or in part, Vendor shall assist the State in doing so at no charge. 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 one (1) day 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. An independent, Third-Party certificate of audit certifying that the Application Services and System(s) complies with NIST 800-53, Revision 4 controls;

11.2.3.1.2. An ISO/IEC 27001:2005 certification;

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

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

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

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

11.2.3.2. 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 engage a Third-Party auditor to perform an SSAE 16 of Vendor's operations, information security program, and disaster recovery/business continuity plan, and shall promptly furnish a copy of the test report or audit report 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, tests, and audits within reasonable timeframes.

11.2.3.4. Access to Security Logs and Reports

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

11.3. Personnel Safeguards

11.3.1. Background Checks

11.3.1.1. Floor

Vendor shall conduct 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, regardless of whether such background checks are conducted by Vendor or the State or its Authorized Contractors.

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 on at least an annual basis using American Institute of Certified Public Accountants standards and other industry best practices as guidance. Vendor shall promptly provide the 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 Indemnitee) directly or indirectly related to, resulting from, or arising out of such occurrence; (e) be responsible for recreating lost Customer Data in the manner and on the schedule specified by the 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 Instrument(s).
- 12.4.6.** During any engagement under this Agreement, Vendor Personnel may perform work on behalf of, and provide deliverables to, Third Parties, and may market and advertise their services to Third Parties, so long as such activities do not: (a) violate any terms or conditions of this Agreement; (b) adversely affect the performance or provisioning of Services or Deliverables hereunder or satisfaction of any other duties, responsibilities, or obligations set forth herein; (c) create an actual or potential conflict of interest; (d) violate any intellectual property rights or interests of the 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 conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State or its officers, directors, employees, officials, and agents, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's designated agent. Vendor appoints [] as its agent to receive service of process. If for any reason Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the 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

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 subcontracts 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 subcontract 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 Contractors. Any action of a Vendor Contractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect. 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.

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

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

12.10. Integration

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

12.11. Supersedes Former Agreements

This Agreement supersedes all prior Agreements 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:

If to Vendor:

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 554D ("**UETA**"), or any other applicable state law, rule, policy, standard, directive, or order. Any document accepted, executed, or agreed to in conformity with such laws, rules, policies, standards, directives, or orders will be binding on the signing Party as if it were physically executed. Vendor acknowledges and agrees it

will not contest the validity or enforceability of any such document(s), including under any applicable statute of frauds, because they were accepted, signed, or transmitted in electronic form. Vendor further acknowledges and agrees that it will not contest the validity or enforceability of a signed scanned or facsimile copy of any such document(s) on the basis that it lacks an original handwritten signature, or on the basis that the Parties were not signatories to the same counterpart.

12.22. Not a Joint Venture

Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.

12.23. Attachments

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

12.24. Further Assurances and Corrective Instruments

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

12.25. Obligations of Joint Entities

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

12.26. Force Majeure

Neither Party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties. "Force majeure" does not include: financial difficulties of Vendor or Vendor Contractors; claims or court orders that restrict Vendor's or Vendor Contractor's ability to perform or deliver the Services, Deliverables, Application Services, or System(s) contemplated by this Agreement; strikes; labor unrest; supply chain disruptions; internet failure; power failures; hacker attacks; denial of service attacks; virus or other malicious software attacks or infections; or Security Breach. If delay results from a Vendor Contractor's conduct, negligence, or failure to perform, Vendor shall not be excused from compliance with the terms and obligations of Vendor unless the Vendor

Contractor is prevented from timely performance by a “force majeure” as defined in this Agreement. If a “force majeure” delays or prevents Vendor’s performance, Vendor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the 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 Contractors, or Vendor Personnel. Vendor shall not

take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of the State or State of Iowa.

12.36. Survives Termination

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

SPECIAL TERMS AND CONDITIONS #001

Application Services/System(s) Description and related Fees

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

1. Application Services and System(s)

The term “Application Services” and “System” as used in the Agreement shall mean the following Vendor-hosted system software and services:

- 1.1. [Vendor: List and describe solution components/software].
- 1.2. [Vendor: List and describe solution components/software].
- 1.3. [Vendor: List and describe solution components/software].
- 1.4. [Vendor: List and describe solution components/software].

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

2.1. Application Service and System(s) Fees prior to Go-Live

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

2.1.1. Subscription Fees after Go-Live

Below is an example of a table that could be included in the contract.

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

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

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

4. Other Third-Party Intellectual Property

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

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

Department of Administrative Services
("the State" or "State")

[Name of Vendor]
("Vendor")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

PURCHASING INSTRUMENT/STATEMENT OF WORK

The following Purchasing Instrument/Statement of Work ("**SOW**") is executed under and pursuant to Employee Discount Program, Contact No. _____, ("**Agreement**") between the State of Iowa, acting by and through the Department of Administrative Services ("**the State**" or "**State**"), and _____, a corporation organized under the laws of _____ ("**Vendor**"). This Purchasing Instrument is effective as of the date of last signature below ("**Effective Date**"). Capitalized terms used but not defined herein are as defined in the Agreement.

1. Executive Summary/Project Scope

Provide a high-level summary of the project, Services, or Deliverables to be provided pursuant to this SOW and the scope of the project.

2. Specifics

2.1 Solution Components

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

2.2 Deliverables

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

2.3 Customer-Owned Deliverables

Identify specific Deliverables the State intends to own, and which will be considered Customer-Owned Deliverables under the Agreement:

2.4 Source Code

Vendor shall develop and deliver all Source Code for the following Deliverables or Software:

2.5 Services

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

2.6 Training and Knowledge Transfer

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

2.7 Support

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

2.8 Documentation

Vendor shall provide all Documentation required for the State and its personnel to make use of the Deliverables, including:

2.9 Location

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

3. Milestones, Payment Schedule, Retained Amount(s), Performance Measures, Compensation

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

#	Milestone	Deliverable(s)	Schedule	Total Payment	Retained Amounts	Net Payment	Performance Standards
1	Project Kick-Off Meeting	--	Effective Date + 5 days	\$--	\$--	\$--	\$--
2	Site Survey	Project Plan	Effective Date + 10 days	\$--	\$--	\$--	\$--
Total				\$--	\$--	\$--	\$--

4. Project Plan

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

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

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

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

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

5.4 The State shall identify applicable training requirements.

6. Assumptions

7. Security

8. Dispute Resolution/Performance Monitoring

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

9. Contacts

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

Vendor Representative:

Address:

Telephone number:

Fax number:

Email address:

State of Iowa Representative:

Address:

Telephone number:

Fax number:

Email address:

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

Department of Administrative Services
("the State" or "State")

[Name of Vendor]
("Vendor")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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

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

1. Overview

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

2. Definitions

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

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

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

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

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

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

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

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

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

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

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

“Support Request(s)” means a request by the State to Vendor related to the Application Services, Systems(s), or related Deliverables being un-Available.

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

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

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

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

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

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

3. Service Levels

3.1. Support Requests

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

3.1.1. Support response times

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

Title	Performance Level		Measurement Period
Support Response Times* *Response times reflect responses within Normal Business Hours. If a ticket is submitted before or after Normal Business Hours, the performance level requirement will begin at the next Normal Business Hour.	Level 1	30 minutes	From initial request
	Level 2	3 hours	
	Level 3	6 hours	
	Level 4	8 hours	

3.1.2. Support Status Update

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

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

3.2. Uptime/Availability

The Application Services, System(s), and related Deliverables will be Available:

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

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

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

3.3. Download Time

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

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

- 3.3.1. Vendor shall be responsible all Download Times in accordance with the service levels identified above, including if the failure to meet the required Download Time performance level was caused, in whole or in part, by Vendor Contractor(s) or Vendor Personnel.
- 3.3.2. Vendor shall be responsible all Download Times in accordance with the service levels identified above, based on the assumption that the State, State Users, or Users may have relatively slow internet connection speeds, including as low as twenty (20) megabits per second of download speed.
- 3.3.3. Tests of Download Times shall be conducted by Vendor over any two (2) hour period during Critical Hours every ten (10) business day(s) using a representative number of logged-on computers or terminals for the selected two (2) hour period and running a representative sampling of applications then being accessed or used.

4. Reporting/Audits

4.1. Reporting

Vendor shall track and report monthly to the State regarding its satisfaction of the service levels and performance measures established in Section 3 (Service Levels), above. Such report shall include metrics specifying Vendors response time in relation to Support Requests, its follow-up time in relation to Status Updates, the Availability of the Application Services, System(s), and related Deliverables during Critical Hours and Non-Critical Hours, and Download Times of the Application Services, System(s), and related Deliverables. Vendor further agrees to provide, at no cost to the State, measurement tools capable of directly making all measurements necessary to verify any and all Service Level(s) identified in Section 3 (Service Levels).

4.2. Audits

The State or its Authorized Contractors will have the right to audit Vendor's measurement, monitoring, and reporting on all service levels herein, including providing the State with access to the data used by Vendor to calculate its performance against the service levels and the measurement, monitoring tools, and procedures utilized by Vendor to generate such data for purposes of audit and verification.

5. Remedies

5.1. Service Level Credits

Vendor's failure to achieve any of the service levels described in Section 3 (Service Levels)

shall constitute a **“Service Level Failure.”** Upon the occurrence of any Service Level Failure, Vendor shall issue to the State a credit, and shall otherwise be liable to the State, in the amount set forth in the table below (**“Service Level Credit”**).

5.2. Notification/Fee Offset

Vendor shall notify the State if the State becomes entitled to a Service Level Credit in the monthly performance reports as described in Section 4 (Reporting/Audits). The total amount of Service Level Credits to which the State is entitled each month shall be reflected on the invoice issued in the second month following the month during which the Service Level Credit(s) was earned as an offset of the fees otherwise due by the State to Vendor under the Agreement. Upon request, and in the State’s sole discretion, Vendor may be required to issue a refund of Service Level Credits to the State.

5.3. Service Level Credits:

Service Level Failure	Service Level Credits
Support Response Times/Support Status Updates	<p>1/30th of the monthly fees for each three (3) documented instances in which a Level 1 or 2 Service Level Failure has occurred in a month.</p> <p>1/60th of the monthly fees for each three (3) documented instances in which a Level 3 or 4 Service Level Failure has occurred in a month.</p>
Uptime/Availability	<p>For Downtime occurring during Critical Hours, 3% of the monthly fees for every 0.1% below the required Service Level.</p> <p>For Downtime occurring during Non-Critical Hours, 1% of the monthly fees for every 0.1% below the required Service Level.</p>
Download Times	<p>For Download Times failing to meet the applicable Service Level during Critical Hours, 1% of the monthly fees for every ten (10) instances a Service Level Failure has occurred in a month.</p> <p>For Download Times failing to meet the applicable Service Level during Non-Critical Hours, .5% of the monthly fees for every ten (10) instances a Service Level Failure has occurred in a month.</p>

5.4. Termination for Chronic Service Level Failures

In addition to its termination rights under the Agreement, the State may, in its sole discretion, terminate the Agreement or any active Purchasing Instruments without further obligation to Vendor in the event Vendor fails to achieve any of the required Service Levels for (a) three (3) consecutive months, or (b) any three (3) months during a consecutive six (6) month period.

5.5. Survival

Service Level Credits due or owing the State shall survive termination of the Agreement.

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

Department of Administrative Services
("the State" or "State")

[Name of Vendor]
("Vendor")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Special Terms and Conditions #003
Insurance Requirements

The following Special Terms and Conditions are part of and incorporated into the Employee Discount Program Agreement No. [____], ("**Agreement**") between the State of Iowa, acting by and through the Department of Administrative Services ("**State**"), and _____, a corporation organized under the laws of _____ ("**Vendor**"). Capitalized terms used but not defined herein are as defined in the Agreement.

1. Insurance Requirements

Vendor shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa, insurance covering its work of the type and in amounts required by this attachment. Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor's performance of the Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Exhibit shall: (a) remain in full force and effect for the entire Term of the Agreement; and (b) not be reduced, changed (to the detriment of the State of Iowa or any Governmental Entities), or canceled (without being simultaneously replaced by another policy meeting the requirements of this Exhibit). The State of Iowa shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: "It is hereby agreed and understood that the State of Iowa is named as additional insured, and that the coverage afforded to the State of Iowa under this policy shall be primary insurance. If the State of Iowa has other insurance that is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance." Notwithstanding the foregoing, the requirement that the State of Iowa be named as additional insureds on all policies of insurance shall not apply to Vendor's Workers Compensation Insurance. The State of Iowa will accept a combined Technology Errors and Omissions and Cyber Liability policy or a separate Technology errors and Omissions and separate Cyber Liability policy. Such insurance shall, (a) cover the liability of Vendor by reason of any actual or alleged error, omission, negligent act or wrongful act of Vendor committed in rendering or failing to render any products or services, and shall specifically include coverage for liabilities caused by a security breach, breach of privacy, or a breach of privacy regulations, including unauthorized disclosure of information, unauthorized access, or failure to protect a network security breach; liabilities resulting from the unauthorized release, transmission or publication of private or technical information in your possession under the scope of the Agreement; (b) including the indemnification of the State of Iowa for any costs and expenses, including the State of Iowa's notification expenses, incurred by the State of Iowa arising out of a security breach, privacy breach, or breach of privacy regulations; with an occurrence or per claim limit and annual aggregate limit of not less than \$15,000,000 each claim/\$15,000,000 annual aggregate; and (c) if underwritten on a claims made insuring agreement, be maintained for a period of not less than two (2) years after the expiration of the Agreement. In the event Vendor fails to secure and continuously maintain the insurance coverage required under this attachment, the State of Iowa may charge Vendor, and Vendor shall pay the State of Iowa, (a) the State of Iowa's actual expenses incurred in purchasing similar protection and (b) the value or amount of any claims, actions, damages, liabilities, costs, and expenses paid by the State of Iowa which would not have been paid by the State of Iowa if Vendor had complied with the requirements of this Exhibit.

2. Insurance Policies

Unless otherwise requested by the State of Iowa, Vendor shall cause to be issued insurance policies with the coverages set forth below:

<u>Type of Insurance</u>	<u>Limit</u>	<u>Amount</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$15 million
	Products –	
	Comp/Op Aggregate	\$15 million
	Personal injury	\$15 million
Excess Liability, umbrella form	Each Occurrence	\$5 million
	Aggregate	\$15 million
Technology Errors and Omissions Insurance	Each Occurrence	\$5 million
	Aggregate	\$15 million
Workers Compensation and Employer Liability	As Required by Iowa law	\$2 million
Cyber Liability / Network Security	Each Occurrence	\$15 million
	Aggregate	\$15 million

3. Claims Provision

All insurance policies required by this Exhibit, with the exception of the policy for Errors and Omissions Insurance, must provide coverage on an “occurrence basis” for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy. The policy for Errors and Omissions Insurance will provide coverage on a “claims made” basis, provided however, that such policy includes extended reporting period or tail coverage acceptable to the State of Iowa.

4. Certificates of Coverage

At the time of execution of the Agreement, Vendor shall deliver to the State of Iowa certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to the Agreement, certifying that the State of Iowa is named as an additional insured on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the State of Iowa. Vendors’ certificate(s) must also include all Vendor Contractors as additional insureds under its policies, or Vendor must furnish to the State separate certificates for each Vendor Contractor. All coverage for Vendor Contractors shall be subject to the minimum requirements identified above. All certificates of insurance shall be subject to approval by the State of Iowa. The Vendor shall simultaneously with the delivery of the certificates deliver to the State of Iowa one duplicate original of each insurance policy.

5. Liability of Vendor

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

6. Waiver of Subrogation Rights

Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State of Iowa. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State of Iowa for all policies.

7. Filing of Claims

In the event the State of Iowa suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Vendor shall, at the State of Iowa's request, immediately file a proper claim under such policy. Vendor will provide the State of Iowa with proof of filing of any such claim and keep the State of Iowa fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the State of Iowa. Vendor shall pay to the State of Iowa any insurance proceeds or payments it receives in connection with any such claim immediately upon Vendor's receipt of such proceeds or payments.

8. Proceeds

In the event the State of Iowa suffers a loss that may be covered under any of the insurance policies required under this attachment or the Agreement, neither Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the State of Iowa has fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the State of Iowa all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this attachment and the Agreement.

Department of Administrative Services
("the State" or "State")

[Name of Vendor]
("Vendor")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____