

STATE OF IOWA SOFTWARE AS A SERVICE AND PROFESSIONAL SERVICES AGREEMENT

This Software as a Service and Professional Services Agreement (“**Agreement**”) is entered into this _____ day of _____, 201____ (“**Effective Date**”) by and between [name of Vendor], a [entity type (e.g., limited liability company, limited liability partnership, or corporation)] registered in the State of [State of registration (e.g., Delaware)], with its principal place of business at [address of Vendor’s principal place of business] (“**Vendor**”) and the State of Iowa, acting by and through the Department of Administrative Services on behalf of the Iowa Department of Agriculture and Land Stewardship (“**State of Iowa**” or “**State**”) for the provision of services and other deliverables in accordance with the following terms and conditions. When used herein, the term “**Agreement**” includes the body of this Agreement and any and all Statements of Work entered into by the Parties (as defined below) and all exhibits attached hereto. Vendor and the State of Iowa may be referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.”

1. Definitions

- 1.1. “**Additional Terms**” has the meaning set forth in Section 19.13.
- 1.2. “**Application Services**” means the hosted applications and related services as described in Exhibit A.
- 1.3. “**Authorized Contractor(s)**” means independent contractors, consultants or other third parties who are retained or hired by the State, any State User or any other Governmental Entity of the State to support, modify, or enhance any Deliverables or Services, or to otherwise assist the State, any Governmental Entity, or any State Users in connection with the use of any Deliverables or Services.
- 1.4. “**Changes**” has the meaning set forth in Section 7.2.
- 1.5. “**Confidential Information**” means, subject to the provisions of this Agreement and any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party to the other 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.
- 1.6. “**CPI**” has the meaning set forth in Section 9.2.
- 1.7. “**Documentation**” means all of Vendor’s training course materials, system specifications and technical manuals, and all other user instructions, documentation and materials regarding the capabilities, operation, and use of the System, Services and/or Deliverables, including, but not limited to, online help screens contained in or related to the System, Application Services, and/or any other Services or Deliverables.
- 1.8. “**Error**” means (i) with respect to Application Services, Services, or Deliverables, any defect, flaw, error, bug, or problem of any kind, or any failure of the Application Services, Services, or Deliverables to conform to an applicable Specification; or (ii) with respect to the Application Services, any failure or problem that impairs or adversely affects the performance, availability, or functionality of the Application Services.
- 1.9. “**Error Correction**” means (i) with respect to the Application Services, either a modification to the Application Services that corrects an Error in all material respects, or a procedure or routine that, when implemented in the regular operation of the Application Services, eliminates the adverse effect of the Error in all material respects; and (ii) with respect to other Services or Deliverables, a modification, workaround, or upgrade that corrects an Error in all material respects or eliminates the adverse effects of the Error in all material respects.
- 1.10. “**Escrow Agent**” has the meaning set forth in Section 11.2.1.
- 1.11. “**Escrow Agreement**” has the meaning set forth in Section 11.2.1.

- 1.12. “**Finally Determined**” has the meaning set forth in Section 9.1.
- 1.13. “**Force Majeure Event**” has the meaning set forth in Section 19.5.
- 1.14. “**Governmental Entity**” means any governmental entity as defined in Iowa Code Section 8A.101, or any successor provision to that section, existing now or in the future. The term Governmental Entity shall be expressly deemed to also include the Iowa Department of Agriculture and Land Stewardship (IDALS).
- 1.15. “**Go Live**” has the meaning set forth in Section 8.1.1.
- 1.16. “**Indemnified Items**” has the meaning set forth in Section 15.1.
- 1.17. “**Indemnities**” has the meaning set forth in Section 15.1.
- 1.18. “**Initial Term**” has the meaning set forth in Section 8.1.1.
- 1.19. “**New Contractor**” has the meaning set forth in Section 8.8.
- 1.20. “**OCIO**” means the Iowa Office of the Chief Information Officer or its successor.
- 1.21. “**Person**” shall have the meaning set forth in Iowa Code § 4.1 or any successor provision thereof.
- 1.22. “**Personal Services**” means any services performed onsite at the State of Iowa or otherwise specifically performed for the State of Iowa, including training, custom development, consulting, or implementation services.
- 1.23. “**Proposal**” has the meaning set forth in Section 19.12.
- 1.24. “**Reject**” has the meaning set forth in Section 5.1.
- 1.25. “**Release Conditions**” has the meaning set forth in Section 11.2.2.
- 1.26. “**Renewal Term**” has the meaning set forth in Section 8.1.2.
- 1.27. “**RFP**” has the meaning set forth in Section 19.12.
- 1.28. “**Services**” means the Application Services, Personal Services and Support Services, and any other services provided by or on behalf of Vendor under or through this Agreement. Services shall include the performance or provision of any Deliverables by or on behalf of Vendor under or through this Agreement, including, but not limited to, the development and implementation of the System and the provision of any other Deliverables or services as may be described in a Statement of Work.
- 1.29. “**Source Material**” means, with respect to the Application Services, the source code of such software and all related compiler command files, build scripts, scripts relating to the operation and maintenance of such application, application programming interface (API), graphical user interface (GUI), object libraries, all relevant instructions on building the object code of such application, and all documentation relating to the foregoing, such that collectively the foregoing will be sufficient to enable a person possessing reasonable skill and expertise in computer software and information technology to build, load and operate the machine-executable object code of such application, to maintain and support such application and to effectively use all functions and features of such software.
- 1.30. “**Specifications**” means any and all specifications, requirements, technical standards, performance standards, representations, warranties, criteria, acceptance criteria, and other specifications related to any Deliverables (including the Application Services) described or stated in this Agreement (including any exhibit or documentation attached to, or provided in connection with this Agreement), any

Statement(s) of Work, the RFP, and the Proposal, and, solely to the extent not inconsistent with the foregoing, the Documentation. Specifications shall also include the Acceptance Criteria and any requirements, standards, criteria or other specifications set forth in any applicable state, federal and local laws, rules, regulations, standards, and requirements. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

1.31. “**Statement of Work**” or “**Statements of Work**” means the initial statement of work set forth in Exhibit B to this Agreement, and any additional, sequentially numbered statement(s) of work that may be executed by the parties, and any amendments thereto. Each Statement of Work will describe the Deliverables and Services to be provided by Vendor and the fixed compensation amounts and final delivery dates associated therewith. Each Statement of Work is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

1.32. “**State of Iowa Confidential Information**” means any data, information (including, but not limited to, Confidential Information of State Users and Governmental Entities), or materials (regardless of the format or medium—digital, physical, or otherwise) disclosed or provided by or on behalf of, or for the benefit of, or otherwise obtained from, the State of Iowa, State Users, Governmental Entities, and any other Users, Authorized Contractors, Persons or entities in relation to Vendor’s performance of this Agreement or in connection with this Agreement or the Services in any way whatsoever, including but not limited to all data (including but not limited to Personal Data), information, and materials provided to or accessed by Vendor through or in connection with the Application Services or System or in connection with any other Services or Deliverables. The State of Iowa’s Confidential Information shall include State of Iowa Property.

1.33. “**State of Iowa Manager**” has the meaning set forth in Section 18.4.

1.34. “**State of Iowa Property**” means the State of Iowa’s Confidential Information, data, software, hardware, databases, security access, intellectual property, technologies, services, programs or other information or property possessed, owned, provided, or maintained by the State of Iowa.

1.35. “**State Users**” means the State of Iowa, the IDALS, the DAS, and any other State 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.

1.36. “**Status Meeting**” has the meaning set forth in Section 18.2.

1.37. “**Status Report**” has the meaning set forth in Section 18.2.

1.38. “**Support Services**” means the maintenance and other services described in Section 7 (Support Services) and in the applicable Statement(s) of Work.

1.39. “**System**” means the FARMS system as more fully described in this Agreement (including Exhibit A, the initial Statement of Work, the RFP, and the Proposal) and all component parts and Deliverables which comprise the System.

1.40. “**Term**” has the meaning set forth in Section 8.1.3.

1.41. “**Third Party Intellectual Property**” shall mean intellectual property, including software, licensed, made, conceived, or developed by a third party and provided or used by or on behalf of Vendor in connection with or embedded in the Application Services, System, or any other Deliverables or Services provided by Vendor under this Agreement, including but not limited to any software used by or on behalf of Vendor to host the Application Services and/or System.

1.42. “**Third Party Software**” means any third party software described in Exhibit A.

1.43. “**Transition Period**” has the meaning set forth in Section 8.8.

1.44. “**Users**” means the State Users, any other users of the Services and/or the System, and Persons whose personal or other data, including but not limited to Personal Data, may be stored in, processed by, or transmitted through the Services or the System.

1.45. “**Vendor Exceptions**” has the meaning set forth in Section 19.12.

1.46. “**Vendor Manager**” has the meaning set forth in Section 18.1.

1.47. “**Vendor Personnel**” means all of Vendor’s employees, agents, and subcontractors who perform or provide Services.

2. **Vendor; No Subcontracting.** None of the Services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any subcontractor or other third party without the prior written consent of the State of Iowa, which consent may be withheld in the State of Iowa’s sole discretion. The State hereby consents to Vendor’s use of [identify any subcontractors or third party’s to which the State consents (e.g., third-party hosting provider)] for purposes of [describe services to be provided by previously identified subcontractors or third parties]. Any purported assignment, delegation or subcontract not consented to by the State of Iowa shall be void at the State of Iowa’s option and shall constitute a material breach of this Agreement. Vendor acknowledges that the State of Iowa has entered into this Agreement in reliance on Vendor’s ability and agreement to personally perform Vendor’s obligations hereunder. Notwithstanding the foregoing, Vendor may use subcontractors for code development, quality assurance, and other generic functions that do not require access to State of Iowa Confidential Information or the State’s facilities or relate to the direct performance of the Services. Vendor shall select and utilize only those subcontractors that are capable of meeting or exceeding all of the requirements set forth in or incorporated by reference into this Agreement. Vendor shall oversee each subcontractor’s compliance with such requirements and shall be fully and financially responsible to the State of Iowa for any failure of a subcontractor to meet such requirements. The State of Iowa’s consent to any subcontract or subcontractor shall not be deemed in any way to provide for the incurrence of any additional obligation of the State of Iowa, whether financial or otherwise. Any subcontract that the State of Iowa has consented to shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts and subcontractors of Vendor shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the State of Iowa may deem necessary. Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify and hold harmless the State of Iowa from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, fines, penalties, costs, and expenses of any and every kind or nature whatsoever (including, without limitation, the reasonable value of time of the Iowa Attorney General’s Office and the costs, expenses and attorney fees of other counsel retained by the State of Iowa) arising out of or as a result of Vendor’s breach of any subcontract into which it enters, including Vendor’s failure to pay any and all amounts due to any subcontractor. In addition, the State of Iowa is not responsible for any failure of any subcontractor to pay any amounts that may be due to 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 and/or Deliverables provided under this Agreement, the State of Iowa may (but is not obligated to) 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 the manner authorized in this paragraph shall not relieve Vendor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions allowing the State of Iowa 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 performing and fulfilling all of its obligations, duties and liability under this Agreement and shall be fully responsible and liable for all acts, omissions, or negligence of any such contractor or subcontractor, including, but not limited to, the obligation to properly supervise, coordinate, and perform all work required hereunder. Any action of a subcontractor that if done by Vendor would constitute a breach of this Agreement shall be deemed a breach by Vendor and have the same legal effect.

3. **State of Iowa.** The rights and obligations of the State of Iowa may be, in whole or in part, exercised or fulfilled by any Governmental Entity designated by the State.

4. **Services and Deliverables.**

4.1. Services Defined. In connection with this Agreement, Vendor will provide the State of Iowa, State Users, and, to the extent applicable, Users, with access to and use of the Application Services and perform and provide the Services, all as more particularly described herein.

4.2. Application Services. 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 business activities, including without limitation the provision of information and services to State Users, Users (to the extent applicable), and 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; and (ii) access, use, reproduce and distribute Documentation.

4.3. Statement(s) of Work. Vendor will provide and make available the Deliverables described in each Statement of Work in accordance with the terms of this Agreement. Each Statement of Work will be effective and become valid and enforceable only when signed by the State of Iowa and Vendor. Once a Statement of Work has been executed, Vendor will carry out and complete the duties and responsibilities set forth in the applicable Statement of Work in accordance with the terms and conditions of such Statement of Work, this Agreement, and any project plan (including any implementation plan or schedule), if applicable. Vendor shall commence and complete all work and provide all Deliverables under a Statement of work in accordance with all applicable deadlines, timelines, terms, conditions, Specifications and other requirements, including those which may be specified in a Statement of Work or project plan.

4.4. Support Services. Vendor will provide Support Services as set forth in Section 7.

4.5. Software. To the extent Vendor provides or delivers any software to the State of Iowa in connection with this Agreement for installation on the State of Iowa servers or personal computers or laptops, the State of Iowa will have a non-exclusive license to use, maintain, modify, copy, distribute and support the software solely in connection with its use of the Services as contemplated hereunder. The State of Iowa shall not disassemble, decompile, or reverse engineer the software or remove any proprietary notices thereon. The software will be deemed part of and included in the definition of the Services.

4.6. Third Party Intellectual Property. Any Third Party Intellectual Property shall be deemed part of and included in the definition of "Services" and subject to all terms and conditions of this Agreement relating to the Services. The State of Iowa shall not be bound by any terms and conditions relating to the Third Party Intellectual Property unless such terms and conditions are expressly identified by Vendor in, and attached to, Exhibit A and agreed to by the State in writing.

4.7. Change Orders. The State of Iowa may submit a Change Order following execution of a Statement of Work to request a modification to any of the Services or Deliverables. If a Change Order does not require Vendor to incur any additional material costs or expenses, then Vendor will make such modification within ten (10) business days of Vendor's receipt of the State of Iowa's Change Order. If a Change Order requires that Vendor incur additional material costs or expenses, then Vendor in good faith will provide the State of Iowa with a written, high level, non-binding assessment of such costs and expenses and the time required to perform the modifications required by the Change Order, within ten (10) business days of Vendor's receipt of the State of Iowa's Change Order. The State of Iowa will notify Vendor in writing within ten (10) business days after receipt of the Change Order response from Vendor as to whether the State of Iowa wishes Vendor to implement such Change Order based on such response. The State of Iowa will compensate Vendor for implementation of a Change Order in accordance with the terms and conditions of the relevant Change Order, this Agreement, and Vendor's statement, as provided prior to

Vendor's implementation of the Change Order, if any. Vendor's implementation of a Change Order shall not delay the performance of Services and/or the delivery of Deliverables not reasonably affected by a Change Order.

4.8. Vendor Personnel. Should the State of Iowa be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel assigned by Vendor to perform Personal Services, the State of Iowa may request the replacement of such Vendor Personnel. 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. In the event Vendor should ever need to remove any Vendor Personnel from performing the Personal Services under this Agreement, Vendor shall provide the State of Iowa with adequate notice, except in circumstances in which such notice is not possible, and shall work with the State of Iowa on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Such transitioning to replacement Vendor Personnel shall be at no additional cost to the State of Iowa. Vendor agrees that all Vendor Personnel assigned to perform Personal Services must have experience performing the tasks to which they will be assigned under this Agreement. In the event that, as a result of the actions, inaction, or replacement of Vendor Personnel, additional or accelerated work is required to perform this Agreement, Vendor shall perform all such work at no additional charge to the State of Iowa.

4.9. Import and Export of Data. The State of Iowa shall have the ability to import or export data and information (including but not limited to State of Iowa Confidential Information) in whole or in part from the System at its discretion, at no charge to the State, and in such formats as may be acceptable to the State or any State User, without interference from Vendor. This includes the ability for the State of Iowa to import or export such information and data to/from other contractors (including Authorized Contractors). In the event the State of Iowa is unable to successfully import or export data and information in whole or in part from the System, Vendor shall assist the State of Iowa in doing so upon the State of Iowa's request, at no charge to the State; as it relates to the export of such data and information, Vendor shall provide to or ensure the State of Iowa has obtained an export of the requested data and information within one day of any request in the format specified by the State of Iowa.

5. Acceptance.

5.1. Acceptance Testing. All Deliverables, unless otherwise agreed by the parties in writing, shall be subject to the State's acceptance testing. Upon completion of all work to be performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to the State of Iowa certifying that the Deliverable meets and conforms to applicable Acceptance Criteria and is ready for the State of Iowa to conduct acceptance tests; provided, however, Vendor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Acceptance Criteria prior to delivering such notice to the State of Iowa. The State of Iowa shall have sixty (60) days, or such additional time as deemed necessary or acceptable by the State of Iowa, to complete its review and testing of any Deliverables submitted for testing by Vendor. Upon the State of Iowa's completion of its review and testing, the State of Iowa shall notify Vendor whether it has accepted such Services and/or Deliverables ("**Accept**"), or whether such Services or Deliverables fail to meet applicable Acceptance Criteria ("**Reject**"). The determination as to whether any Services or Deliverables satisfy any applicable Acceptance Criteria shall be made solely by the State of Iowa. If the State of Iowa Rejects a Service and/or Deliverable, the State of Iowa shall provide a written list of items Vendor must correct to bring the Service and/or Deliverable into conformance with the applicable Acceptance Criteria. On receipt of the State of Iowa's notice, Vendor shall promptly commence, at no additional charge to the State of Iowa, all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the Services and/or Deliverables as will permit them to be ready for retesting; provided, however, that in no event shall such corrective measures exceed ten (10) days from receipt of the State of Iowa's notice. The testing and

evaluation process shall resume, as set forth above. If the State of Iowa determines that the Services and/or Deliverables, as revised, still do not comply in all respects with the Acceptance Criteria, the State of Iowa may, at its sole option, either: (a) afford Vendor the opportunity to repeat the correction and modification process as set forth above at no additional cost or charge to the State of Iowa; (b) accept such Service and/or Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the State of Iowa's satisfaction, any reduced value or functionality of such Services and/or Deliverables actually received or delivered as compared against the applicable Acceptance Criteria, or the costs likely to be incurred by the State of Iowa to bring the Services and/or Deliverables actually received or delivered into conformance with the applicable Acceptance Criteria; or (c) depending on the nature and extent of the failure, in the State of Iowa's sole judgment, terminate the relevant Statement(s) of Work or this Agreement and/or seek any and all available remedies, including damages without providing Vendor with any notice or opportunity to cure. The Parties shall repeat the foregoing procedures until the Services and/or Deliverables pass all applicable Acceptance Criteria, or the State of Iowa elects to terminate the Statement(s) of Work or the Agreement as provided above.

5.2. Failed Acceptance Testing. If the State of Iowa terminates a Statement of Work or the Agreement as provided under Section 5.1 (Acceptance Testing), Vendor shall refund or pay to the State of Iowa, within ten (10) business days of written notice of termination, any and all fees, compensation and other amounts previously paid to Vendor by the State of Iowa under this Agreement for all Services and/or Deliverables as to which the termination applies.

5.3. No Waiver. Vendor's receipt of any notice of Acceptance with respect to any Services and/or Deliverables shall not be construed as a waiver of any of the State of Iowa's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or the State of Iowa later discovers a discrepancy between the Acceptance Criteria and the corresponding Services and/or Deliverables actually received or delivered by Vendor to the State.

6. **Documentation**. At no additional charge to the State of Iowa, Vendor shall provide the State of Iowa with all Documentation relating to the Services. If the Documentation for the Services is revised or supplemented at any time, Vendor shall promptly deliver a copy of such revised or supplemental Documentation to the State of Iowa, at no additional cost. The State of Iowa and State Users may, at any time, reproduce copies of all Documentation and other materials provided by Vendor, distribute such copies to the State of Iowa personnel and Authorized Contractors, and incorporate such copies into its own technical manuals, provided that such reproduction relates to the State of Iowa's and its personnel's use of the Services as permitted in this Agreement, and all copyright and trademark notices, if any, are reproduced thereon. To the maximum extent available, Vendor shall deliver the Documentation in electronic form to the State of Iowa, unless otherwise requested by the State.

(a) **Support Services**. Vendor shall provide the Support Services as follows:

6.1. Support Responsibilities. In addition to any warranty obligations of Vendor under this Agreement, Vendor shall:

(b) Promptly correct any Error or any failure of the Services or Deliverables to perform in accordance with the Specifications, including without limitation, defect repair, programming corrections, and remedial programming, and provide such services and repairs required to ensure that the Services and Deliverables operate properly and conform to the Specifications on an ongoing basis during the Term of this Agreement;

(c) Provide telephone support (i) as set forth in Exhibit B, and (ii) to State Users relating to the use and operation of the Services/Deliverables and Error Correction. Such telephone support shall be available twenty-four (24) hours a day, seven (7) days a week. All

telephone support shall be accessible to State Users through a toll-free phone number and shall be provided by Vendor from within the continental United States;

- (d) Provide online access to technical support bulletins and other user support information and forums;
- (e) Provide the Support Services in accordance with the service levels set forth in Exhibit C (Service Levels).
- (f) Vendor may not provide technical user support on a 24/7 basis using a Follow the Sun model.

6.2. Vendor's Changes and Upgrades. Vendor may from time to time during the Term make available new enhancements, upgrades, updates, versions, or releases of the Application Services (collectively, "**Changes**"). Vendor shall provide the Changes to the State of Iowa at no additional charge, cost, or expense. In the event of such Changes, the new version of the Services will include at least the functionality, level and quality of services that the State of Iowa previously received and shall continue to comply with all of the requirements of this Agreement. If any Changes result in material adverse effects on functionality or operation of the Services, including, but not limited to, a failure to comply with the requirements of this Agreement, or compatibility with the State of Iowa's business, legal, funding or regulatory requirements, then the State of Iowa may in its sole discretion terminate the applicable Statement of Work or this Agreement immediately upon notice and without penalty or liability.

6.3. Support Not to be Withheld. Vendor will not under any circumstances withhold Support Services under this Agreement even if there is a dispute (including but not limited to a payment dispute) between the Parties under this Agreement.

7. **Term and Termination.**

7.1. Term. The Effective Date of this Agreement shall be as set forth above. This Agreement or any Statement of Work may be terminated in accordance with the terms of this Agreement. The Initial Term (8.1.1), any Renewal Term(s) (8.1.2), and the Term (8.1.3) shall be calculated, operate, and be subject to the provisions set forth below.

7.1.1. Initial Term. The initial term of the Agreement shall begin on the Effective Date and end on the date that is one year after the Effective Date (the "**Initial Term**"), unless terminated earlier in accordance with the terms of this Agreement. The initial term of the license granted pursuant to Section 4.2 of this Agreement shall begin on the later of the date: (a) on which the State provides Vendor with written notice of Acceptance of all Deliverables/System/Application Services provided under the initial Statement of Work, or (b) the date on which the System goes live into production ((a) and (b) shall be referred to collectively herein as "**Go Live**"); provided, however, if it is necessary for State Users to receive, hold, possess, and/or own either all or a portion of the licenses granted pursuant to Section 4.2 for any reason prior to Go Live, Vendor shall grant to State Users the necessary licenses during any such period, at no charge to the State of Iowa.

7.1.2. Renewal Term(s). After expiration of the Initial Term, the State of Iowa shall have the option to extend/renew the license and this Agreement for additional one-year renewal terms (each a "**Renewal Term**") not to exceed a total contract term of six years. Notwithstanding anything in Section 8.1.1 to the contrary, if the State extends/renews the Agreement under this Section, the license granted pursuant to Section 4.2 of this Agreement shall extend/renew coterminous with any subsequent Renewal Term(s). The decision to extend or renew will be at the sole option of the State

and may be exercised by the State by providing written notice to Vendor at least thirty (30) days prior to the end of the Initial Term and each Renewal Term.

7.1.3. Total Term. The Initial Term and any Renewal Terms are referred to herein collectively as the “**Term.**” The total length of the Term shall be the sum of the Initial Term and any and all Renewal Terms. Vendor shall provide the State of Iowa with at least ninety (90) days prior written notice of the end of the Initial Term and each Renewal Term.

7.2. Bankruptcy. The State of Iowa may, in its sole discretion, terminate this Agreement in the event of the Vendor commencing voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of the Vendor, or upon the Vendor making a general assignment for the benefit of its creditors, or the sale or change of control of Vendor, its business or substantially all its assets.

7.3. Default. Each Party shall have the right to terminate this Agreement in the event the other Party breaches any material provision hereof and the other Party fails to cure such breach no later than sixty (60) days after receiving written notice of default from the non-breaching Party. The State’s withholding of payment of any compensation or amounts in accordance with the terms of this Agreement shall not be considered a breach of any provision of this Agreement.

7.4. Termination for Convenience. The State of Iowa may terminate this Agreement, any Term, or any Statement of Work, Services, or Deliverables immediately upon thirty (30) days written notice to Vendor without reason, penalty or breach of this Agreement, notwithstanding that the Vendor is in compliance with all delivery, performance or other requirements. In the event of any such termination, Vendor shall be compensated for any Services rendered to the State of Iowa’s satisfaction and in accordance with the terms of this Agreement prior to the effective date of the termination. Within fifteen (15) days of termination, Vendor shall refund to the State any prepaid fees, compensation, funds other amounts allocated or relating to Services or Deliverables that were not yet to be rendered or provided with regard to any canceled aspect of the Services or Deliverables.

7.5. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the State of Iowa shall have the right to terminate this Agreement without penalty or liability and without any advance notice as a result of any of the following: (a) the legislature or governor fail, in the sole opinion of the State of Iowa, to appropriate funds sufficient to allow the State of Iowa or any State User to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; (b) if funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the State of Iowa or any State User (regardless of the source of funding or revenues) to make any payment hereunder are insufficient or unavailable for any other reason as determined by the State of Iowa in its sole discretion; (c) if the State of Iowa’s or any State User’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; (d) if any duties, programs or responsibilities of the State of Iowa, the OCIO, or any State User are modified or materially altered; (e) if any event or circumstance occurs that impacts or affects the ability of the State of Iowa or any State User or Governmental Entity, to continue to operate, use, maintain or pay for any Services or Deliverables (or any part or component thereof); or (f) 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 ability of the State of Iowa or any State User to fulfill any of its obligations under this Agreement or the use, operation or maintenance of Services or Deliverables, or any portion or component thereof.

7.6. Effect of Termination. Upon termination of this Agreement, unless otherwise specified in this Agreement or by the State of Iowa in writing:

- (a) Vendor shall cease to perform the Services and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the effective date of termination, describing the status of all Services performed and such other matters as the State of Iowa may require.
- (b) Vendor shall cease using and return to the State of Iowa any materials or property (including State of Iowa Property), whether tangible or intangible, provided by or on behalf of the State of Iowa or any State User to Vendor;
- (c) Vendor shall immediately return to the State any payments made by the State of Iowa (including pro rata refund(s) of any prepaid subscription fees or license fees and/or any other amounts prepaid by the State of Iowa) for Services or Deliverables that were not rendered or provided by Vendor;
- (d) Vendor shall perform, comply with and satisfy all duties and obligations as set forth in Sections 4.10 (Import and Export of Data), 8.8 (Transition), 9.8 (Repayment Obligation), 12.9 (Return of Confidential Information), and any other duties or obligations that survive termination or by their nature would be intended to be applicable following any termination, as requested by the State of Iowa.
- (e) In the event of termination of this Agreement for any reason by either Party (except for termination by the State of Iowa pursuant to Section 8.3 (Default), the State of Iowa shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the State of Iowa (and for Services properly performed in accordance with the terms of this Agreement, prorated as appropriate) up to and including the date of termination of this Agreement and for which the State of Iowa is obligated to pay pursuant to this Agreement; provided however, that in the event the State of Iowa terminates this Agreement pursuant to Section 8.5 (Termination Due to Lack of Funds or Change in Law), the State of Iowa'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 any provision in this Agreement to the contrary, Vendor shall refund to the State of Iowa, within fifteen (15) days of the effective date of termination for any reason, any prepaid fees, funds or other amounts paid by the State allocated or pertaining to Services that were yet to be rendered with regard to any canceled or terminated aspect of the Services, including but not limited to any prepaid fees for Application Services.
- (f) Notwithstanding the foregoing, this Section 8.6 shall neither be construed as in any way limiting the rights or remedies available to the State of Iowa, nor shall it be construed to require the State of Iowa to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the State of Iowa in accordance with the terms of this Agreement.
- (g) The State of Iowa shall not be liable, under any circumstances, for any of the following:
 - (i) The payment of unemployment compensation to Vendor's employees;
 - (ii) The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
 - (iii) Any costs incurred by Vendor

in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement; (iv) 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; (v) Any taxes Vendor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

7.7. Survival. Expiration or termination of this Agreement for any reason will not release either Party from any liabilities or obligations set forth in this Agreement which (a) the Parties have expressly agreed in writing survive any such expiration or termination or (b) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination. Without limiting the foregoing, the following Sections shall survive any termination or expiration of this Agreement: 8 (Term and Termination), including but not limited to 8.7 (Survival); 9. (Fees and Expenses); 10 (Representations, Warranties and Covenants); 11 (Intellectual Property); 12 (Confidentiality); 13 (Security); 14 (Disaster Recovery/Business Continuity/Data Backup/Loss of Data); 15 (Indemnification); 16 (Limitation of Liability); and 19 (General Provisions).

7.8. Vendor Cooperation/Transition Services. Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor will continue to perform such services under this Agreement as the State may request for a transition period up to 365 days from the effective date of termination or expiration of this Agreement. As part of the State's request, the State will inform the Vendor of the number of days during which the Vendor will continue to host and provide access to the Application Services, System, and State of Iowa Confidential Information, and perform transition and other related services under this Section 8.8 (the "**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, including but not limited to a full migration of State of Iowa Confidential Information, from the Vendor to the State and/or to any Authorized Contractor hired or utilized by the State to provide any replacement or similar services related to the Application Services and System (the "**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 to effect a smooth and timely transition and to ensure there is no interruption of any Services, information or transactions provided or conducted through the Application Services and System. Vendor agrees that it will perform all transition services in good faith and in a professional and businesslike manner, and shall comply with all requests of the State and any New Contractor to assist in the effort to accomplish a successful, seamless and unhindered transition of the Application Services and System, migration of State of Iowa Confidential Information, and transfer of Vendor's responsibilities under this Agreement. Vendor will perform all transition services on an expedited basis, as determined by the State. At the State's request, Vendor shall, subject to the terms of any third-party contracts, procure for the State any third-party authorizations or licenses necessary to grant the State and any New Contractor the use and benefit of any contracts between Vendor and third parties and any Third Party Intellectual Property. During the Transition Period, the State agrees to pay to Vendor any fees to which Vendor would be entitled under this Agreement for services performed during such period; provided this Agreement was not terminated pursuant to Section 8.3 (Default) or 8.5 (Termination Due to Lack of Funds or Change in Law), and Vendor continues to be in full compliance with all terms, conditions, provisions and requirements of this Agreement. In the event the State's request for transition assistance does not require Vendor to continue providing all of the services under this Agreement or a particular Statement of Work, the parties shall negotiate in good faith an equitable adjustment in the fees which are otherwise payable to Vendor for such services.

8. Fees and Expenses.

8.1. Fees for Services. The fees for the Services and/or Deliverables shall be as set forth in Exhibit A (Services; Fees) and in any applicable Statements of Work. A failure of the State of Iowa 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 the Services so long as payment of such undisputed fees is made within the cure period set forth in Section 8.3 (Default). For the avoidance of doubt, in the event of any dispute related to fees, Vendor shall continue to perform and provide the Services until such dispute has been Finally Determined by a court of competent jurisdiction or other agreed-upon governing party. “**Finally Determined**” means when a claim or dispute has been finally determined by a court of competent jurisdiction or other agreed-upon governing party and either (a) no associated appeal has timely been sought if capable of being sought, or (b) appellate rights properly exercised have otherwise been exhausted. Vendor is not entitled to payment for any Deliverables or Services provided under this Agreement or any Statement of Work if the State reasonably determines that such Deliverables or Services has not been satisfactorily or completely delivered or performed, or that such Deliverables or Services fails to meet or conform to any applicable Acceptance Criteria or Specifications or that there is a material Error with respect to such Deliverable or Services. No payment, including final payment, shall be construed as acceptance of any Deliverables with Errors or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement.

8.2. Fees During Renewal Terms. All of Vendor’s fees hereunder shall be fixed, as set forth in Exhibit A (Services; Fees) and in any applicable Statements of Work. Provided, however, after the Initial Term, Vendor may increase its fees for solely Application Services for any Renewal Term by providing notice to the State of Iowa at least ninety (90) days prior to the commencement of such Renewal Term. Any such increase shall not exceed the amount equal to the percentage change in the Consumer Price Index (“CPI”) during the preceding calendar year. For purposes of the foregoing, the CPI shall be the index compiled by the United States Department of Labor’s Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U), using that portion of the index that appears under the caption “Other Goods and Services.” (For reference, the CPI is currently posted on the website of the Bureau of Labor Statistics at www.bls.gov). The percentage change in the CPI shall be calculated by comparing the annual CPI figures and expressing the increase in the CPI as a percentage. If the CPI is no longer published, or the CPI currently published is materially changed, then Vendor and the State of Iowa will negotiate, in good faith, revisions to this section to reflect and account for such changes in the CPI. Over the Term of this Agreement, including any and all Renewal Terms, Vendor guarantees that the total fees and other costs payable by the State of Iowa shall not at any time exceed [REDACTED].

8.3. Invoices. Unless provided otherwise in Exhibit A (Services; Fees), Vendor will invoice the State of Iowa for Application Services on a monthly basis. With respect to Deliverables and Services provided under a Statement of Work, Vendor shall invoice the State for those Services or Deliverables that have been accepted by the State upon Vendor’s receipt of the State’s written notice of Acceptance for such Deliverables or Services, with such invoice reflecting the fees applicable to such accepted Deliverables or Services consistent with the fees specified in the applicable Statement of Work. All invoices submitted by Vendor shall comply with all applicable laws, rules, and regulations (including any applicable federal laws, rules, or requirements) 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 of Iowa. Each invoice shall fairly and accurately describe in reasonable detail the actual Services performed and any Deliverables provided, the person(s) or entity(ies) who performed such Services, the dates on which such Services were performed and any Deliverables were provided, and the fees payable by the State of Iowa for such Services and Deliverables. The State of Iowa shall not be required to make payment on any invoices if such documentation is not furnished by Vendor

as herein provided, or if any invoices with respect to the same is rendered more than ninety (90) days after the expenses were incurred, and Vendor shall be solely and exclusively responsible for payment of same at its own cost and expense. The State of Iowa may refuse payment with respect to any invoice that fails to comply with the requirements contained in this Section 9.3 (Invoices). Notwithstanding anything herein to the contrary, the State of Iowa shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the State of Iowa believes the invoice is inaccurate or incorrect in any way.

8.4. Payment Terms. Except for payments identified as prepayment agreed to by the State for Services and/or Deliverables, the State of Iowa shall pay all undisputed amounts set forth in approved invoices in arrears and in conformance with Iowa Code Section 8A.514 and 11 Iowa Admin. Code 41.1(2). The State of Iowa may pay in less than sixty (60) days, as provided in Iowa Code Section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code Section 8A.514.

8.5. Payment Does Not Imply Acceptance. The making of any payment or payments by the State of Iowa, or the receipt thereof by Vendor, shall in no way affect the responsibility of Vendor to furnish the Services and Deliverables in accordance with this Agreement, and shall not imply acceptance by the State of Iowa of such Services or Deliverables or the waiver of any warranties or requirements of this Agreement.

8.6. Resellers. In the event any of the Services or Deliverables are purchased through Vendor's authorized reseller ("**Reseller**"), subject to all other terms of this section, Vendor authorizes Reseller to invoice the State of Iowa for the Services and/or Deliverables on Vendor's behalf in accordance with Section 9.3, and further authorizes the State of Iowa to pay the undisputed amounts due to Reseller, thereby fully satisfying any obligation that the State may have to Vendor with respect to such payment or compensation. The State of Iowa is not responsible for any failure of Reseller to pay any amounts that may be due to Vendor, and Vendor may not refuse to perform its obligations under this Agreement for such failure.

8.7. Erroneous Payments and Credits. Except for payments identified as prepayment for Services and/or Deliverables, Vendor shall promptly pay or refund to the State of Iowa the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the State of Iowa of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the State of Iowa under this Section 9.7, the State of Iowa will 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 allowed by law, whichever is greater. The State of Iowa may, in its sole discretion, elect to have Vendor apply any amounts due to the State of Iowa under this Section 9.7 against any amounts payable by the State of Iowa under this Agreement.

8.8. Repayment Obligation. In the event that any State of Iowa and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Vendor will be liable to the State of Iowa (or any other applicable Governmental Entity) 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 that 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. The Vendor shall pay to the State of Iowa all amounts for which the Vendor is liable under this Section within ten (10) business days of receiving the State of Iowa 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. The requirements of this Section shall apply to the Vendor, its affiliate and subcontractors.

8.9. Prepayment. Notwithstanding anything in this Agreement to the contrary, the State of Iowa may, at its sole discretion, elect to prepay fees for the Services and/or Deliverables in accordance with applicable laws, rules and procedures.

8.10. Responsibility for Costs. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this Section 9. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.

8.11. Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in connection with the performance of this Agreement or the provision of Services and Deliverables. The State of Iowa is exempt from the payment of sales and all other taxes.

8.12. All Fees Stated. Except as provided in this Section 9 (Fees and Expenses), as specifically stated in Exhibit A or any Statement of Work, or otherwise agreed pursuant to a valid amendment to or modification of this Agreement, there are no other fees or other amounts to be paid by the State of Iowa in connection with this Agreement for the Services and/or Deliverables. Any work performed by Vendor and not specifically authorized by the State of Iowa in writing shall be considered gratuitous and Vendor shall have no right or claim whatsoever to any form of compensation.

8.13. Set-off Against Sums Owed by Vendor. In the event that Vendor owes the State of Iowa or any Governmental Entity any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the State of Iowa or the Governmental Entity may set off such sum against any sum invoiced to the State of Iowa by Vendor in the State of Iowa's sole discretion unless otherwise required by law. Any amounts due to the State of Iowa as damages may be deducted by the State of Iowa from any money or sum payable by the State of Iowa to Vendor pursuant to this Agreement or any other agreement between Vendor and the State of Iowa. The State of Iowa's exercise of rights under this Section 9.13 shall not be considered a breach of this Agreement by the State of Iowa.

8.14. Withhold Remedy. In addition to, and cumulative to all other remedies in law, at equity and provided under this Agreement, in the event Vendor is in material default of its duties or obligations under this Agreement and it fails to cure the default within fifteen (15) days after receipt of written notice of default from the State of Iowa, the State of Iowa may, without waiving any other rights under this Agreement, elect to withhold from the payments due to Vendor under this Agreement during the period beginning with the 16th day after Vendor's receipt of notice of default, and ending on the date that the default has been cured to the reasonable satisfaction of the State of Iowa, an amount that is in proportion to the magnitude of the default or the service that Vendor is not providing, as determined in the State of Iowa's reasonable discretion. Upon curing of the default by Vendor, the State of Iowa will cause the withheld payments to be paid to Vendor, without interest. In addition to the foregoing, the State of Iowa may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the State of Iowa or work stoppage by Vendor, in the event the State of Iowa determines that any Service or Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing an Error. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the State of Iowa under this Agreement. The State of Iowa's exercise of its rights to withhold payments shall not be considered a breach of this Agreement by the State of Iowa.

8.15. Audits and Records. During the Term and for a period of five (5) years thereafter, Vendor shall maintain accurate, current and complete books, documents and records that sufficiently and properly document Vendor's performance and provision of Services and other Deliverables under this Agreement, including all records that document all fees and other amounts charged during the Term. If any

litigation, claim, negotiation, audit or other action involving the books, documents and records has been started before the expiration of the five-year period, Vendor must retain the records until completion of the action and resolution of all issues which arise from it, or until the end of the above-described five (5) year period, whichever is later. Vendor shall permit the State of Iowa, the Auditor of the State of Iowa, or any authorized representative of the State of Iowa, 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, and records, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement, wherever located. At the request of the State of Iowa, Vendor shall deliver and provide, at no charge, complete copies of such books, documents and records to the State of Iowa or its designee in such formats and within such time period as may be specified by the State of Iowa in its request. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit, examination or delivery of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section. Based on the audit findings, the State of Iowa reserves the right to address Vendor's board or other managing entity regarding performance and expenditures. For the Term of this Agreement, upon the State of Iowa's written request, Vendor shall provide the State of Iowa with a copy of its most recent annual American Institute of Certified Public Accountants SSAE 16 Service Organization Control (SOC) 1 type 2 report. If and to the extent state or federal law or the terms of this Agreement require compliance with the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards codified at 2 C.F.R. § 200.1–521 or other similar provisions addressing proper use of government funds, Vendor shall comply with the following additional records retention and access requirements:

- (a) Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Agreement require matching funds, cash contributions made by Vendor and third party in-kind (property or service) contributions must be verifiable from Vendor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.
- (b) Vendor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- (c) Vendor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the State of Iowa.
- (d) Vendor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9).
- (e) All non-medical records must be maintained for a period of at least five (5) years, unless otherwise specified by this Agreement.

9. Representations, Warranties and Covenants.

9.1. Vendor Warranties. Vendor represents and warrants that: (a) it has the full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein, and its

performance of this Agreement does not violate or conflict with any agreement to which Vendor is a party; (b) the Services will be performed in a professional, workmanlike, and timely manner; (c) all Services and Deliverables shall materially conform to applicable Specifications and all other requirements set forth in this Agreement at all times during the Term; (d) the State of Iowa's permitted use of the Services and Deliverables do not and will not infringe the intellectual property rights of any third party at any time during the Term of this Agreement or as may be applicable thereafter; (e) there is no pending or threatened litigation that would have a material adverse impact on Vendor's performance under the Agreement; (f) Vendor shall not store, transmit or make available any State of Iowa Confidential Information with or to any entity or individual outside the continental United States; (g) the Documentation shall be complete and accurate so as to enable a reasonably skilled person to effectively use all features and functions of the System, Services and/or Deliverables without assistance from Vendor and, on each date on which Vendor delivers any Documentation to the State of Iowa, such Documentation is Vendor's most current version thereof; (h) there is no existing pattern or repetition of material customer complaints regarding the Deliverables or Services, including functionality or performance issues, and that Vendor's engineers have not currently identified any repeating adverse impact on the Deliverables or Services, including functionality or performance, for which the root cause is believed to be a flaw or defect in the Deliverables or Services; (i) it shall use industry best practices to scan and remove any viruses, worms, Trojan horses, and other similar harmful or destructive code from the Services and Deliverables both (1) prior to Vendor's delivery of any Deliverables to the State of Iowa, and (2) on an ongoing basis on a frequency consistent with industry best practices to the extent applicable with respect to any Services or Deliverables (including the System or Application Services); and (j) Vendor is not in arrears with respect to the payment of any monies due and owing the State of Iowa or any Governmental Entity thereof, including but not limited to the payment of taxes and employee benefits.

9.2. Deliverables. Vendor represents and warrants that: (a) all Deliverables, excluding Third Party Software, shall be wholly original with and prepared solely by Vendor; (b) Vendor owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the State of Iowa hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the State of Iowa without violating any rights of any third party; (c) Vendor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the State of Iowa herein; and (d) the State of Iowa shall peacefully and quietly use and enjoy the Deliverables without suit, disruption or interruption.

9.3. Compliance with Applicable Laws. Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws relating to privacy and information security, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, laws relating to the use of targeted small businesses as subcontractors or suppliers, and [name any other specific laws or rules that may be of import, including Vendor's potential obligation to ensure State's compliance with laws applicable to the State, rather than Vendor (flow down obligations)]. Vendor shall comply with any applicable reporting and compliance standards of the Iowa Department of Administrative Services regarding equal employment. Vendor may be required to submit its affirmative action plan to the Iowa Department of Administrative Services to comply with the requirements of 11 Iowa Admin. Code Chapter 121. Vendor shall make the provisions of this Section 10.3 a part of its contracts with any subcontractors providing goods or services related to Vendor's performance of this Agreement. Vendor further represents, warrants and covenants that the Services comply with and will at all times comply with

the State of Iowa Website Accessibility Standard (available at <https://ocio.iowa.gov/standards>) and including Section 508 of the Rehabilitation Act of 1973, as amended, all standards and requirements established by the Architectural and Transportation Barriers Access Board, and the World Wide Web (W3C) Web Accessibility Initiative. Without limiting the foregoing, Vendor covenants that the Application Services will pass W3C validation and meet the accessibility standards of 36 C.F.R. § 1194, which implements Section 508 of the Rehabilitation Act of 1973. Vendor further represents, warrants and covenants that the Services comply with, and will at all times comply with during the Term of this Agreement shall comply with, all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders. Vendor represents, warrants and covenants that during the Term, the Services provided hereunder (and the State's and State User's use of same) will enable the State to at all times comply fully with all applicable federal, state, and local laws, rules, ordinances, codes, regulations and orders, including but not limited to **[name any other specific laws or rules that may be of import, including Vendor's potential obligation to ensure State's compliance with laws applicable to the State, rather than Vendor]**. Notwithstanding any provision in this Agreement to the contrary, to the extent that Vendor fails to meet or otherwise breaches any of its duties or obligations under this Section 9.3, it shall be liable and responsible for any fines, penalties, taxes, fees, damages, costs, expenses, or other amounts assessed to, imposed against or otherwise incurred by the State of Iowa or any State Governmental Entity, and the State may consider any such failure or breach to be material breach of this Agreement.

9.4. Disclaimer of Other Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED.

10. Intellectual Property.

10.1. Ownership. This is not a work made-for-hire agreement (as that term is defined in Section 101 of Title 17 of the United States Code) with regard to either Party. Except for express licenses granted in this Agreement, neither Party is granting nor assigning to the other Party any right, title, or interest, express or implied, in or to the Party's intellectual property. Each Party reserves all rights in such property. Except as otherwise set forth in a Statement of Work, to the extent Vendor provides any intellectual property to the State of Iowa in connection with the Services and/or Deliverables, such intellectual property shall be deemed part of and included in the definition of "Services" hereunder and, among other things, be subject to the license granted in Section 4.

10.2. Source Code Escrow.

10.2.1 Escrow Agent. Vendor, the State of Iowa, and an escrow agent approved by the Parties ("**Escrow Agent**") shall concurrently with execution of this Agreement, enter into a Source Code Escrow Agreement ("**Escrow Agreement**"). Immediately following the execution of the Escrow Agreement, Vendor shall deliver to the Escrow Agent for deposit all Source Materials. Vendor shall continually update the Source Material by promptly depositing in the escrow each new release, update, version, enhancement, correction, patch, and improvement of the Services. Vendor's duty to update the Source Material shall continue through the Term.

10.2.2 Release Conditions. The Source Material will be held in the Escrow and the events upon which the State of Iowa shall have access to the Source Material shall include (collectively the "**Release Conditions**"): (1) the insolvency of Vendor; (2) the making of a general assignment by Vendor for the benefit of its creditors or a filing of a

voluntary or involuntary petition in bankruptcy by or against Vendor that is not dismissed within thirty (30) days of the filing thereof; (3) in the event Vendor ceases to provide, maintain, and/or support the Application Services for any reason other than the State of Iowa's failure to pay for, or election not to receive, the Application Services or corresponding Support Services, whichever is applicable, and no other qualified entity has assumed the obligation to provide, maintain, and/or support the Application Services; (4) Vendor violates or commits a material breach of any term or condition of this Agreement and fails to cure said breach within the applicable cure period; (5) Vendor assigns, transfers, delegates, or subcontracts any of its obligations or duties under this Agreement without the prior written consent of the State; (6) Vendor violates or commits a breach of any term or condition of the source code escrow agreement, which breach has not been cured by Vendor within any applicable time period stated therein for curing such breach. Notwithstanding any other provision of this Agreement to the contrary, if a Release Condition occurs, the State of Iowa may hire Vendor personnel to assist the State of Iowa with using and understanding the Source Material.

- 10.2.3 Use of Source Material. Upon the occurrence of a Release Condition (or any other release conditions that may be specified under the Escrow Agreement), the State of Iowa will, upon payment of the duplication cost and other handling charges of the Escrow Agent, be entitled to obtain a copy of the Source Material from the Escrow Agent. The State of Iowa shall be entitled to use the Source Material as needed to remedy the event of release and mitigate any damages arising from such event. Such use will include, but is not limited to, the State of Iowa's right to host, perform its own support and maintenance for, and/or alter or modify the Source Material using its own equipment and employees and/or that or those of third party contractors, including Authorized Contractors. Nothing herein shall relieve Vendor of its obligation to provide Services, including Support Services, as required under this Agreement.
- 10.2.4 Proprietary Rights. The Source Material referred to herein is subject to the confidentiality and proprietary provisions of Section 12. Notwithstanding the foregoing, following the occurrence of a Release Condition and subsequent release of the Source Material to the State of Iowa, Source Material may be provided to any Authorized Contractor to service, maintain, repair, operate, or otherwise facilitate and continue the use and operation of the Application Services as provided herein. The State of Iowa shall require such Authorized Contractors to execute an agreement protecting the confidentiality of the Source Material consistent with the terms of this Agreement. Should use of the Source Material as provided in this Section involve the use or practice of any patent, copyright, trade secret, trademark or other proprietary information in which Vendor has an interest, Vendor, its assignee, or successors, agree not to assert a claim for patent, copyright, trade secret, trademark or other proprietary information infringement against the State of Iowa provided the use of Application Services and Source Material is in accordance with this Agreement.
- 10.2.5 The State of Iowa's Right to Verify Source Material. Regardless of whether one of the Release Conditions occurs, the State of Iowa shall have the right, at the State of Iowa's sole expense, to verify (itself or through use of third party contractors, including the Escrow Agent) the relevance, completeness, currency, accuracy, and functionality of the Source Material by, among other things, compiling the Source Material and performing test runs for comparison with the capabilities of the Application Services. In the event such testing demonstrates the Source Material does not correspond to the

Application Services, Vendor shall reimburse State of Iowa for all costs and fees incurred in the testing and immediately deposit the correct Source Material with the Escrow Agent.

10.2.6 Version Verification. The Escrow Agreement shall provide that, upon the State of Iowa's request, the Escrow Agent shall indicate the version of the Source Materials held in the escrow and the date they were received from the Vendor.

10.2.7 Agreement Supplementary. The Escrow Agreement shall be "supplementary" to this Agreement within the meaning of Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). If this Agreement and/or the Escrow Agreement are/is rejected by Vendor as a debtor in possession or a trustee or by any other person or entity under the U.S. Bankruptcy Code, then State of Iowa may elect to retain its rights as provided in Section 365(n). The Parties intend that no bankruptcy or bankruptcy proceeding, petition, law or regulation (and no other proceeding, petition, law or regulation of a similar nature in any state or foreign jurisdiction) will impede, delay or prevent the release of Source Materials to State of Iowa in accordance with the provisions of this Agreement and the Escrow Agreement, and Vendor hereby conveys and licenses to State of Iowa such rights (including intellectual property rights) as are necessary to allow State of Iowa to lawfully exercise its rights hereunder. This license is granted as of the date of this Agreement and shall predate any bankruptcy petition subsequent to such date.

10.3. Use of State of Iowa Property. The State of Iowa may, but is not required to (unless otherwise set forth in a Statement of Work), provide the Vendor access to State of Iowa Property. The State of Iowa hereby grants Vendor a non-exclusive, non-transferable license to use State of Iowa Property solely for the State of Iowa's benefit in connection with Vendor's performance of the Services. The State of Iowa may terminate the foregoing license at any time, without cause, on written notice to Vendor. Unless specifically authorized in the Statement of Work, Vendor shall use State of Iowa Property only in the form provided by the State of Iowa, without modification. In addition, Vendor will maintain and use State of Iowa Property in accordance with any written instructions and/or specifications provided by the State of Iowa. Except for the limited license provided in this Section 11.3 (Use of State of Iowa Property), nothing contained in this Agreement shall be construed as granting Vendor any right, title, or interest in or to any State of Iowa Property.

11. Confidentiality.

11.1. No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor shall not make any media release or other public announcement relating to or referring to this Agreement without the State of Iowa's prior written consent. Vendor shall acquire no right to use, and shall not use, without the State of Iowa's prior written consent, the terms or existence of this Agreement or any Statement of Work, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the State of Iowa or any Governmental Entity, 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 by the State of Iowa; or (c) in any manner other than expressly in accordance with this Agreement.

11.2. Exclusions. Neither Confidential Information nor State of Iowa Confidential Information includes any information that: (a) 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; (b) was known to the receiving Party prior to the disclosure of the information by the disclosing Party only if evidenced by written records kept in the ordinary course of business or by

proof of actual use by the receiving Party; (c) was disclosed to the receiving Party without restriction by an independent third party having a legal right to disclose the information; (d) 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; (e) is independently developed by the receiving Party without any reliance on Confidential Information disclosed by the disclosing Party; (f) 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 (g) is disclosed by the receiving Party with the written consent of the disclosing Party. It will be presumed that any Confidential Information in a receiving Party's possession is not within exceptions (a), (b), (c), or (e) above, and the burden will be upon the receiving Party to prove otherwise by records and documentation. Notwithstanding the foregoing, exclusion (d) shall not apply to State of Iowa Confidential Information.

11.3. Vendor's Treatment of Confidential Information. Vendor and its employees, agents, approved contractors and subcontractors may have access to State of Iowa Confidential Information to the extent necessary to carry out its responsibilities under the Agreement. State of Iowa Confidential Information shall at all times remain the property of the State of Iowa, and the State of Iowa shall retain exclusive rights thereto and ownership thereof. Vendor shall hold any and all State of Iowa Confidential Information in strictest confidence and will use and permit use of State of Iowa Confidential Information solely for the purposes of this Agreement. Without limiting the foregoing, Vendor shall use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of State of Iowa Confidential Information as the State of Iowa employs with respect to its own confidential information and data of a like importance. Vendor may disclose or provide access to its responsible employees who have a need to know and may make copies of State of Iowa Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder. Vendor will designate one individual who shall remain in charge of all State of Iowa Property collected, used, or disseminated by Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors must execute confidentiality or non-disclosure agreements to obtain access to certain State of Iowa Confidential Information. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any State of Iowa Confidential Information received, collected, maintained, or used in the course of performance of the Agreement except for the sole purpose of performing the Services hereunder, subject to the restrictions set forth in this Agreement and all applicable state and federal laws, rules and regulations applicable either during the term of this Agreement or thereafter. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, sell, assign, lease, or otherwise dispose of State of Iowa Confidential Information to third-parties or commercially or politically exploit or otherwise use such Information. Vendor shall not remove from the State of Iowa's facilities or retain a copy of any of the State of Iowa's Confidential Information obtained from, or as a result of access to, the State of Iowa's systems unless that removal or retention is reasonably necessary to perform the Services or is otherwise approved in writing by the State of Iowa.

11.4. The State of Iowa's Treatment of Confidential Information. Except as provided or contemplated herein, and subject to applicable state, federal, and/or international laws, rules or regulations (including, without limitation, Iowa Code Chapter 22, IDALS Public Records and Fair Information Practices (IAC 21.6), and any other applicable administrative rules adopted by the State of Iowa), the State of Iowa shall not intentionally disclose Vendor's Confidential Information to a third party (excluding State Users, Governmental Entities and Authorized Contractors) without the prior written consent of Vendor. Notwithstanding the foregoing, the State of Iowa may disclose Vendor's Confidential Information: (a)

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; (b) pursuant to any applicable laws, rules, or regulations; (c) if the State of Iowa determines that such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules and regulations; or (iv) if the State of Iowa determines Vendor has not provided or is unwilling to provide facts sufficient to enable the State of Iowa to make a determination whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rules and regulations. In such event, the State of Iowa shall provide prompt notice to Vendor of the circumstances giving rise to the State of Iowa's disclosure. Vendor acknowledges that the State of Iowa is subject to and required to comply with Iowa Code Chapter 22 and other laws, rules and regulations governing public records. If a request is made to view or otherwise access Vendor's Confidential Information pursuant to such laws, rules or regulations, the State of Iowa will promptly notify Vendor of the request.

11.5. Treatment of Personal Data. Without limiting any other warranty or obligation specified in this Agreement, and in particular the confidentiality provisions of this Section 12 (Confidentiality), during the Term and thereafter in perpetuity, Vendor will not gather, store, log, archive, use or otherwise retain any Personal Data in any manner and will not disclose, distribute, sell, share, rent or otherwise transfer any Personal Data to any third party, except as expressly required to perform its obligations in this Agreement or as Vendor may be expressly directed in advance in writing by the State of Iowa. Vendor represents and warrants that Vendor will use Personal Data only in compliance with (a) this Agreement, (b) the State of Iowa's then-current applicable privacy notice, and (c) all applicable local, state, and federal laws and regulations, including but not limited to Iowa Code chapter 715C and all other current and future laws and regulations relating to spamming, privacy, data protection, and consumer protection.

11.6. Retention of Personal Data. Vendor will not retain any Personal Data for any period longer than necessary for Vendor to fulfill its obligations under this Agreement. As soon as Vendor no longer needs to retain such Personal Data in order to perform its duties under this Agreement, Vendor will, at the State of Iowa's request, promptly return, destroy or erase all originals and all copies of such Personal Data.

11.7. Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over Vendor, Vendor may disclose State of Iowa Confidential Information in accordance with such law or order or requirement, subject to the following conditions: as soon as possible after becoming aware of such law, order or requirement and prior to disclosing such Confidential Information pursuant thereto, Vendor will so notify the State of Iowa in writing and, if possible, Vendor will provide the State of Iowa notice not less than five (5) business days prior to the required disclosure. Vendor will use reasonable efforts not to release State of Iowa Confidential Information pending the outcome of any measures taken by the State of Iowa to contest, otherwise oppose or seek to limit such disclosure by the Vendor and any subsequent disclosure or use of State of Iowa Confidential Information that may result from such disclosure. Vendor will cooperate with and provide assistance to the State of Iowa regarding such measures. Notwithstanding any such compelled disclosure by the Vendor, such compelled disclosure will not otherwise affect Vendor's obligations hereunder with respect to State of Iowa Confidential Information so disclosed.

11.8. Return of Confidential Information. On the State of Iowa's written request or upon expiration or termination of this Agreement for any reason, the Vendor will promptly: (a) return or destroy, at the State of Iowa's option, all State of Iowa Confidential Information, whether in written or in machine-readable form, including without limitation, all originals and copies of all documents and materials it has received containing the State of Iowa's Confidential Information; and (b) deliver or destroy, at the State of Iowa's option, all originals and copies of all summaries, records, descriptions, modifications, compilations,

negatives, drawings, adaptations and other documents or materials, whether in written or in machine-readable form, prepared by Vendor, prepared under its direction, or at its request from the documents, materials, data, or information referred to in subparagraph (a), and provide a notarized written statement to the State of Iowa certifying that all documents and materials referred to in subparagraphs (a) and (b) have been delivered to the State of Iowa or destroyed, as requested by the State of Iowa. To the extent Vendor is required to destroy any documents, materials, data, or information pursuant to subparagraphs (a) and (b), above, such documents, materials, data, or information shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. On termination or expiration of this Agreement, the State of Iowa shall, except to the extent otherwise required by applicable laws, rules, procedures or State record retention requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items subject to any continuing licenses to the State of Iowa hereunder or that are required for use of the Deliverables).

11.9. Open Records and Electronic Discovery Requests and Record Retention. Vendor will, upon the State of Iowa's request and within any time period specified by the State of Iowa, take all actions requested by State of Iowa to assist the State of Iowa in complying timely with any request for records, data, or information or materials of any kind that may be made by any person or entity in accordance with applicable public or open records laws (including, without limitation, 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 of Iowa to produce or provide data, records, or information of any kind to a third party. Vendor will produce and provide all data, records, information or materials of any kind within the time period set forth in State of Iowa's written request. Vendor will take all steps necessary to ensure that all data and records will be stored and maintained in their original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon State of Iowa's request, take all actions requested by State of Iowa to assist the State of Iowa in complying with any state or federal record retention requirements, policies, procedures or any requirements of any United States Governmental Entities.

11.10. Discovery Requests and Court Orders. In the event that either Party or its service providers or contractors or subcontractors receive a request to disclose all or any part of the State of Iowa's Confidential Information under the terms of a subpoena or order or demand issued by a court or a Governmental Entity, the relevant or receiving Party agrees: (i) to notify the other Party immediately of the existence, terms, and circumstances surrounding such request, (ii) to consult with the other Party on the advisability of taking legally-available steps to resist or narrow such request and to cooperate with the other Party in relation to any such steps, and (iii) to furnish only such portion of State of Iowa's Confidential Information or information as it is legally compelled to disclose and to exercise reasonable best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to State of Iowa's Confidential Information.

11.11. 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 12 (Confidentiality) will constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement in the exclusive discretion of the non-breaching Party.

11.12. Non-disclosure and Separation of Duties. Vendor shall diligently monitor and enforce separation of job duties, require best effort non-disclosure agreements, and limit staff knowledge of State of Iowa Confidential Information to that which is absolutely necessary to perform job duties.

12. Security.

12.1. Compliance. Vendor and Vendor's subcontractors shall comply with state and federal data security and privacy statutes, regulations, rules, and other laws relating to data security and privacy. Vendor further represents, warrants, and covenants that Vendor and its personnel and subcontractors will ensure that the Services and Deliverables (including the System and Application Services), will at all times comply with all applicable state and federal IT standards, policies and guidelines, including, but not limited to those relating to security, internet and the web, data backup, and the standards and controls provided at:

- NIST 800-53, Revision 4 controls - <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>;
- ISO/IEC 27001:2013 - http://www.iso.org/iso/catalogue_detail?csnumber=54534;
- <https://secureonline.iowa.gov/laws-rules-and-standards>.

Annually throughout the Term of this Agreement, Vendor shall obtain and provide the State with the following, at no additional cost to the State of Iowa: a) an independent, third-party certificate of audit certifying that the Services comply with NIST 800-53, Revision 4 controls; b) ISO/IEC 27001:2005 Certification; c) test or assessment results of an independent, third party assessment of application scans using the Open Web Application Security Project (OWASP) Top Ten List; d) test results of a penetration test conducted by an independent, third-party firm; e) a copy of Vendor's annual SOC 2 type 2 report (for all Trust Services Principles); and f) a Vendor produced remediation plan resulting from items a through e, inclusive.

Upon the State's request, Vendor shall also provide the State with a copy of a system security plan (SSP), or other comparable report, for inspection by the State. The State shall bear any and all costs incurred in connection with its inspection of the SSP. The State may, in its sole discretion, utilize a third-party contractor to inspect the SSP; provided, however, that the State shall be responsible for all costs associated with such inspection. The inspection of the SSP shall be completed according to mutually agreeable terms and timelines, but no less frequently than annually, unless agreed to by both parties in writing.

Vendor acknowledges and agrees that it will be subject to and bound by all of the terms and provisions set forth in this Section 13 and shall require and, to the extent applicable, cause any subcontractor used by Vendor in connection with this Agreement to agree to be subject to and bound by all of the foregoing. In addition, Vendor and its personnel and subcontractors will ensure that all networks, servers, computer systems, hardware, IT infrastructure and other hardware on which the Services are hosted, installed, operated, processed, stored or otherwise located, comply with all such State of Iowa and federal IT laws, rules, regulations, standards, policies and guidelines, and all of the other standards and controls noted above.

12.2. Reporting. Vendor will notify the State of Iowa within two (2) hours of Vendor's discovery of any actual or suspected breach of confidentiality, privacy or security (or any unauthorized access) with regard to any State of Iowa Confidential Information, and/or any breach of Vendor's or the State of Iowa's data security procedures, which includes, but is not limited to, instances in which internal personnel access systems in excess of their user rights or use the systems inappropriately, any Breach of Security as defined in Iowa Code Chapter 715C, [name other specific applicable laws defining Security Breach or Breach of Security], and any other breach of security as defined by any applicable law, rule, or regulation. Such notification to the State must be given in the most expedient time possible and without unreasonable delay.

Written confirmation must be sent within forty-eight (48) hours of discovery or notification of the breach or suspected breach.

12.3. Investigations and Remedies. In addition to Vendor's other obligations under this Agreement, or under any law or regulation, Vendor agrees, at its sole expense, to take all steps necessary to promptly remedy any breach described in Section 13.2 and to fully cooperate with the State of Iowa in resolving such breach and mitigating any damage from such breach at Vendor's sole cost. At no additional cost to the State, Vendor will fully cooperate with the State of Iowa in investigating the breach, 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. On notice of any actual or suspected breach, Vendor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to the breach in accordance with industry best practices. Vendor will deliver to the State of Iowa a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting State of Iowa Property, including State of Iowa Confidential Information. Vendor will 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 based on any findings. Vendor agrees that it will not notify any regulatory authority or any User relating to any such security breach on behalf of the State of Iowa unless the State of Iowa specifically requests in writing that Vendor do so. Vendor and the State of Iowa will work together to formulate a plan to rectify all security breaches.

12.4. Additional Procedures in the Event of Security Breach. Upon the State of Iowa's determination that a breach of security (including but not limited to any Breach of Security as defined in Iowa Code Chapter 715C, name other specific applicable laws defining Security Breach or Breach of Security, and any other breach of security as defined by any applicable law, rule, or regulation) involving or relating to any State of Iowa Confidential Information has occurred or is reasonably possible, Vendor shall fully cooperate with the State of Iowa in rectifying any breach or misuse, including notifying all of the State of Iowa's affected Users. The State of Iowa shall determine, in its sole discretion, the content and means of delivery of the User notice. Notwithstanding any provision in this 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, without limitation, 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) related to, arising out of or incurred by or on behalf of the State of Iowa as a result of, any security breach caused directly or indirectly, in whole or in part, by Vendor, its affiliates, employees, or subcontractors, including, but not limited to, the costs of notifications of affected individuals and businesses and any applicable regulators or governmental entities (including, preparation, printing, mailing and delivery); the cost of opening and closing accounts, printing new checks, embossing new cards; the costs of forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for affected individuals; the costs of obtaining credit monitoring services and identity theft insurance for any person or entity whose Personal Data 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. Vendor will reimburse or pay to the State of Iowa all such expenses, fees, damages and all other amounts within fifteen (15) business days of the date of any written demand or request delivered by the State of Iowa to Vendor.

12.5. Security Audits by the State of Iowa. During the Term, the State of Iowa or its third party designee may, but is not obligated to, perform audits of Vendor's environment, including unannounced penetration and security tests, as it relates to the receipt, maintenance, use or retention of the State of Iowa's Confidential Information. Any of the State of Iowa's regulators (and any federal agencies providing grant funds used to pay for Services, in whole or in part) 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.

12.6. Security Testing; Compliance Audits. Vendor will periodically test its systems for potential areas where security could be breached. During the Term, to the extent Vendor engages a third party auditor to perform an SSAE 16 of Vendor's operations, information security program, and/or disaster recovery/business continuity plan, Vendor shall promptly furnish a copy of the test report or audit report to the State of Iowa. In addition, Vendor shall disclose its non-proprietary security processes and technical limitations to the State of Iowa, such that adequate protection and flexibility can be attained between the State of Iowa and Vendor. For example, Vendor shall disclose its security processes with respect to virus checking and port sniffing to the State of Iowa such that the State of Iowa is capable of identifying necessary compensating controls to adequately safeguard and protect its data, information, and systems.

12.7. Data Ownership. All data, including all State of Iowa Confidential Information, obtained by Vendor in the performance of or during the Term of this Agreement shall be and remain the sole and exclusive property of the State of Iowa, including without limitation all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State of Iowa, any Governmental Entity or any User (including but not limited to by or through Vendor on behalf of the State of Iowa, any Governmental Entity, or any User, or in any way related to the State of Iowa's, any Governmental Entity's or any User's use of the System or Application Services).

12.8. Data Protection. Protection of personal privacy and data shall be an integral part of the business activities of Vendor to ensure there is no inappropriate or unauthorized use of the State of Iowa's Confidential Information at any time. To this end, Vendor shall safeguard the confidentiality, integrity and availability of the State of Iowa's Confidential Information. In so doing, Vendor shall comply with the following conditions:

- (a) Vendor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of State of Iowa Confidential Information. Such security measures shall be in accordance with recognized industry practice (including, NIST 800-53 Revision 4 and ISO27001:2013 standards and controls) and not less stringent than the measures the Vendor applies to its own personal data and non-public data of similar kind. Additionally, such securities measures, to the extent applicable, shall comply with, and shall enable the State to at all time comply fully with, all applicable federal, state, and local laws, rules, ordinances, codes, regulations and orders related to such security measures or other date security or safeguarding requirements, including but not limited to iname any specific laws or rules that may be of import, including Vendor's potential obligation to ensure State's compliance with laws applicable to the State, rather than Vendor.
- (b) All State of Iowa Confidential Information shall be encrypted at rest and in transit with controlled access. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor is responsible for encryption of all State of Iowa Confidential Information. 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 Personal Data, unless the State of Iowa approves in writing the storage of Personal Data on a Vendor portable device.

- (c) At no time shall any State of Iowa Confidential Information be copied, disclosed or retained by Vendor, any subcontractor, or any party related to Vendor for subsequent use in any transaction that does not include the State of Iowa.
- (d) Vendor shall not use any State of Iowa Confidential Information collected, processed, stored or transmitted in connection with the Services provided under this Agreement for any purpose other than fulfilling Vendor's express obligations and duties under this Agreement.

12.9. Data Location. Vendor shall provide Services to the State of Iowa, Governmental Entities, and Users solely from data centers located in the continental United States of America. Storage of State of Iowa Confidential Information, or any other State data, at rest and all backups shall be located solely in data centers located in the continental United States of America. Vendor shall not allow its personnel or subcontractors to store State of Iowa Confidential Information or any data on any portable devices, including personal computers, tablets, or cell phones, except for devices that are used and permanently stored at all times only at its continental United States of America data centers. Vendor shall permit its personnel and subcontractors to access State of Iowa Confidential Information remotely only as required to provide technical support.

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

12.11. Access to Security Logs and Reports. Vendor shall provide security logs and reports to the State of Iowa in a mutually agreeable format. Such reports shall include at least latency statistics, user access summaries, user access IP address summaries, user access history and security logs for all State of Iowa files related to this Agreement.

12.12. Section 13, and Vendor's duties, obligations and liability under this Section 13 shall survive termination or expiration of this Agreement.

13. Disaster Recovery/Business Continuity/Data Backup/Loss of Data.

13.1. Creation, Maintenance and Testing. Vendor shall maintain a Business Continuity and Disaster Recovery Plan for the Services (the "**Plan**"), and implement such plan in the event of any unplanned interruption of the Services. On or before the Effective Date, Vendor shall provide the State of Iowa 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 of Iowa with copies of all reports and/or summaries resulting from any testing of the Plan and with copies of all such updates to the Plan. All updates shall be subject to the requirements of this Section 14 (Disaster Recovery/Business Continuity). Any future updates or revisions to the Plan shall be no less protective than the plan in effect as of the Effective Date. Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard the State of Iowa's Confidential Information and the data processing capability and availability of the Services. Additional disaster recovery/business continuity requirements may be set forth in individual Statement(s) of Work.

13.2. Activation of Plan. Vendor shall immediately notify the State of Iowa of any disaster or other event in which the Plan is activated. If Vendor fails to reinstate the Services within the periods of time set

forth in the Plan, the State of Iowa may in addition to any other remedies available hereunder, in its sole discretion, immediately terminate this Agreement as a non-curable default under Section 8.3 (Default). 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 of Iowa shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 19.5 (Force Majeure) shall not limit Vendor's obligations under this Section 14 (Disaster Recovery/Business Continuity). Further, nothing in this Section 14 shall be construed as in any way limiting: Vendor's obligations elsewhere in this Agreement, including but not limited to any applicable service levels as set forth in Exhibit C; or any rights or remedies available to the State of Iowa.

13.3. Backup and Recovery. Vendor is responsible for maintaining a backup of State of Iowa Confidential Information as further set forth in Exhibit C. Unless stated otherwise in Exhibit C, Vendor shall maintain a contemporaneous backup of State of Iowa Confidential Information that may be recovered within two (2) hours at any point in time. Additionally, unless stated otherwise in Exhibit C, Vendor shall store a backup of State of Iowa Confidential Information in an off-site "hardened" facility no less than daily, maintaining the security of State of Iowa Confidential Information, and consistent with the security requirements set forth in Section 13 (Security). To the extent applicable, any backups of State of Iowa Confidential Information shall not be considered in calculating storage used by the State of Iowa.

13.4. Loss of Data. In the event of any act, error or omission, negligence, or misconduct that compromises or is suspected to compromise the security, confidentiality, or integrity of State of Iowa Confidential Information or the physical, technical, administrative, or organizational safeguards put in place by Vendor or any of its Subcontractors related to the protection of the security, confidentiality, or integrity of State of Iowa Confidential Information, 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 of Iowa as soon as practicable but no later than two (2) hours of becoming aware of such occurrence; (b) send the State of Iowa written confirmation within forty-eight (48) hours of discovery or notification of the occurrence; (c) cooperate with State of Iowa 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 of Iowa, State Users, Governmental Entities, and their 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, without limitation, 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 State of Iowa Confidential Information in the manner and on the schedule specified by the State of Iowa without charge to the State of Iowa; and, (g) provide to the State of Iowa a detailed plan within ten (10) calendar days of the occurrence describing the measures Vendor will undertake to prevent a future occurrence.

13.5. Section 14, and Vendor's duties, obligations and liability under this Section 14 shall survive termination or expiration of this Agreement.

14. **Indemnification.**

14.1. Indemnification. Vendor and its successors and permitted assigns shall indemnify and hold harmless the State of Iowa, Governmental Entities, 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 expenses (including, without limitation, 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 this Agreement, including, but not limited to, any claims related to, resulting from, or arising out of: (i) any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading; (ii) any action, inaction, negligence or willful misconduct of Vendor that causes any injury to any person or persons or damage to tangible or intangible property; (iii) any failure by Vendor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, and federal laws, rules, ordinances and regulations, including, without limitation, name any other specific, applicable laws, and those relating to Personal Data; (iv) any action or inaction by Vendor or its employees, agents, officers, directors, affiliates, contractors or subcontractors, or any failure of the Services or the System that causes or contributes to any failure of the State of Iowa or any Indemnitee to comply with any name any other specific, applicable laws, legal or regulatory requirements with which the System or the Services are or may be designed or intended to facilitate compliance; (v) any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State; (vi) any breach (or threatened or claimed breach) of security or other incident affecting any State of Iowa Confidential Information, the System or the Services, or any other event involving unauthorized access to or use of any State of Iowa Confidential Information, the System or the Services; (vii) any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including, without limitation, any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation or security; and/or (viii) any claim that the State of Iowa's authorized use of any Services and/or Deliverables (collectively, the "**Indemnified Items**") infringe any third party's patent, copyright, trade secret or other intellectual property rights (collectively, "**Claim(s)**"), including the payment of all amounts that a court or arbitrator awards or any settlement amounts relating to any Claim(s) as well as any and all reasonable expenses or charges as they are incurred by the State of Iowa or any other party indemnified under this Section 15.

14.2. Infringement Claim Additional Remedy. If the Indemnified Items, or any portion of them, become or are likely to become the subject of an infringement Claim as provided in Section 15.1(viii), then, in addition to paying any damages and attorney fees as required above, Vendor shall, at its option, either (a) immediately replace or modify the Indemnified Items, without loss of material functionality or performance, to make them non-infringing, or (b) immediately procure for the State of Iowa the right to continue using the Indemnified Items pursuant to this Agreement. 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 infringement Claim, in addition to any other remedies available to the State of Iowa available under this Agreement, at law, or in equity, the State of Iowa shall have the right, at its sole option, to terminate this Agreement and/or the applicable Statement of Work and have Vendor refund to the State of Iowa all associated fees, compensation or other amounts paid by the State of Iowa.

14.3. Claims. Vendor's obligations under this Section 15 (Indemnification) are not limited to third-party claims but shall also apply to first-party claims by the State of Iowa against Vendor.

14.4. Survival of Duties. Vendor's duties as set forth in this Section 15 shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the State or any other Indemnitee.

15. **Limitation of Liability.** Except as otherwise set forth herein, and only to the extent permitted by and not prohibited by applicable laws, rules and regulations: the maximum liability of either Party under this Agreement shall be five (5) times the Contract Value (Contract Value is defined as the aggregate total compensation to be paid by the State of Iowa to the Vendor under the entire term of the Agreement, including all renewals and extensions); provided, however, under no circumstances shall the foregoing limitation apply to any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:

15.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or the negligence, or bad faith of Vendor, its officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors;

15.2. Death, bodily injury, security breaches or unauthorized access affecting State of Iowa Confidential Information (including Personal Data), or damage to real or personal property;

15.3. Any contractual obligations of Vendor pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws, including but not limited to any laws related to data security and privacy, Personal Data, and/or name any other specific, applicable laws.; confidential information; data security or breach of security, including but not limited to breach/notification; disaster recovery; return/migration of data;

15.4. Any claims arising under provisions of the Agreement calling for indemnification of the State of Iowa or any Indemnitee for third-party claims against the State of Iowa for bodily injury to persons or for damage to real or tangible personal property caused by the Vendor's negligence or willful conduct;

15.5. Corruption or loss of data/information; loss of revenue or inability to collect revenue; inability to process or pay claims or to make any other payments; system downtime or loss of use (including failure to meet service levels as set forth in Exhibit C).

The limitation on Vendor's liability specified in this Section 16 shall not, under any circumstances, apply to any losses, damages, expenses, costs, settlement amounts, judgments, legal fees, actions, claims, or any other liability or other amounts that may be covered (or otherwise eligible to be paid or indemnified) under any insurance policies, bonds or other coverages held or maintained by or on behalf of Vendor. Further, nothing in this Agreement, including Section 16, shall: (i) be construed as an admission, assumption or representation by the State that any limitation on Vendor's liability specified in Section 16 is enforceable against the State under applicable law or that the State or the has the authority to agree to the limitation on Vendor's liability specified in Section 16; (ii) prevent the State from challenging the enforceability or validity of this Section 16; or (iii) be construed to waive any clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on recovery provided by law to the state or any agency, department or official of the State.

16. **Insurance.** Vendor shall obtain, pay for, and maintain in full force and effect during the Term insurance as set forth on Exhibit D (Insurance). On written request by the State of Iowa, Vendor shall furnish the State of Iowa with reasonable evidence of its then current insurance coverages.

17. **Management and Control; Reporting.**

17.1. Vendor Manager. Vendor shall assign a manager ("**Vendor Manager**") to manage Vendor's performance of the Services. The Vendor Manager shall be responsible for Vendor's day-to-day activities under this Agreement and for providing the State of Iowa reports as provided in Section 18.2 (Reports) or elsewhere in this Agreement. The Vendor Manager shall also serve as Vendor's liaison with the State of Iowa, assign and schedule Vendor Personnel to perform all of the Services required by Vendor under this Agreement, and act as Vendor's initial representative for dispute resolution. Any change of the Vendor Manager (other than death, disability or Vendor Manager's voluntary departure from Vendor) shall

be subject to the State of Iowa's prior approval, which approval shall not be unreasonably withheld or delayed.

17.2. Reports. The Vendor Manager and the State of Iowa Manager, as defined in Section 18.4 (State of Iowa Manager), shall communicate at least once every two (2) weeks (the "**Status Report**") about the work in progress. The communications shall include a conference call or an in person meeting (the "**Status Meeting**") and a report from the appropriate Vendor Personnel regarding:

- (a) Overview of the Services occurring and status of Deliverables during the reporting period;
- (b) Issues to be resolved;
- (c) Issues resolved;
- (d) Updates on any scheduling and milestones;
- (e) Any other information that the State of Iowa or Vendor may, from time-to-time, reasonably request in writing that Vendor or the State of Iowa, as the case may be, may deem appropriate.

17.3. Problem Reporting Omissions. The State of Iowa'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 that the State of Iowa may have. The State of Iowa's failure to identify the extent of a problem or discrepancy with Specifications, or the extent of damages incurred as a result of a problem or discrepancy with Specifications, shall not act as a waiver of performance under this Agreement.

17.4. State of Iowa Manager. The State of Iowa shall assign a manager ("**State of Iowa Manager**") who will be responsible for the State of Iowa's day-to-day activities with respect to such project under this Agreement. The State of Iowa Manager shall serve as the State of Iowa's initial representative for dispute resolution. The State of Iowa Manager shall respond to the Vendor Manager's reports to the extent that a response is appropriate as determined by the State of Iowa Manager. All Services provided by Vendor hereunder shall be subject to approval by the State of Iowa Manager. Any change of the State of Iowa Manager shall be in the State of Iowa's sole discretion; provided the State of Iowa shall notify Vendor in writing of any change. The State of Iowa Manager shall be the only individual authorized to approve changes or additional fees or charges under this Agreement on behalf of the State of Iowa, which approval must be in writing.

17.5. Semi Annual Review Meetings. Vendor and the State of Iowa shall, at semiannual intervals, hold a review meeting at the State of Iowa's offices, or at such other place as is mutually agreed to by the Parties, to review the performance of the Services, service levels as set forth in Exhibit C, discuss fee and expense issues, and address such other issues as may be relevant at the time. The Vendor Manager (and any other Vendor Personnel who attend) will attend at the sole cost of Vendor.

17.6. Alert Reports. The Vendor shall promptly notify the State of Iowa both in writing (i.e., facsimile transmission or courier) and by phone on becoming aware of any change or problem that would negatively impact completion or performance of the Services and/or Deliverables, the progress of tasks assigned under a Statement of Work, or any schedule in a Statement of Work. Both the written notice and phone notice shall include a detailed description or explanation, respectively, of the relevant change or problem. The Vendor shall provide the State with additional details and updates on a frequent basis by secure email regarding the status of any such change or problem.

18. General Provisions.

18.1. Independent Contractors. Vendor is an independent contractor and is not an agent or employee of, and has no authority to bind, the State of Iowa by contract or otherwise.

18.2. Employment Taxes and Benefits. Vendor agrees to pay all necessary employment taxes required by law. Vendor Personnel will not be entitled to receive any vacation or illness payments, or to participate in any plans, arrangements, or distributions by the State of Iowa pertaining to any pension, insurance or similar benefits for the State of Iowa employees. In addition, Vendor agrees that it will provide for Workers' Compensation, unemployment, and all other coverage required under applicable local, state or federal law. Vendor further agrees that it will defend (including payment of all attorneys' fees) and indemnify the State of Iowa against any claim asserted against the State of Iowa for Vendor's failure to comply with its obligations under this paragraph.

18.3. Assignment. Vendor may not assign, transfer or delegate its rights or obligations under this Agreement without the prior written consent of the State of Iowa. The State of Iowa reserves the right to assign its rights and obligations hereunder, as it deems appropriate. All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the Parties, their successors, assigns and legal representatives.

18.4. Compliance with Iowa Code Chapter 8F. If this Agreement is subject to the provisions of Iowa Code chapter 8F, then the Vendor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Agreement. The Vendor shall provide the State of Iowa with any compliance documentation, including but not limited to certifications, received from subcontractors by the Vendor.

18.5. Force Majeure. If either Party cannot perform any of its obligations because of any act of God, court order, war, or any other similar cause not within the Party's reasonable control and could not be avoided through the exercise of reasonable care and diligence (a "**Force Majeure Event**"), then the non-performing Party will: (a) immediately notify the other Party; (b) take reasonable steps to resume performance as soon as possible; and (c) not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues for a period of five (5) business days, the State of Iowa may terminate this Agreement by providing written notice to Vendor. In the event Vendor's performance hereunder is the subject of any Force Majeure Event, the fees to be paid by the State of Iowa shall be equitably adjusted to reflect the period of non-performance. Notwithstanding the foregoing, a Force Majeure Event will not relieve Vendor of its obligations under Sections 7 (Support Services), 12 (Confidentiality), 13 (Security), and 14 (Disaster Recovery) or any service levels as set forth in Exhibit C. A Force Majeure Event does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of the Vendor or any subcontractor used by the Vendor; claims or court orders that restrict Vendor's ability to provide goods and services contemplated by this Agreement; strikes; supply chain disruptions; labor unrest; Internet outages; viruses; Trojan Horses; worms; cancelbots; denial of service attacks; hacking; intrusions; security breaches (including but not limited to any Breach of Security as defined in Iowa Code Chapter 715C, [name other specific applicable laws defining Security Breach or Breach of Security.] and any other breach of security as defined by any applicable law, rule, or regulation)); or any other similar item, malicious code or action that might interfere with or adversely affect the Services. If delay results from Vendor's contractor's, subcontractor's or supplier's conduct, negligence or failure to perform, the Vendor shall not be excused from compliance with the terms and obligations of the Vendor unless the subcontractor or supplier is prevented from timely performance by a Force Majeure Event as defined in this Agreement.

18.6. Governing Law; Venue. 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: (a) 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; (b) 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 (c) waives any objection to such jurisdiction based on forum non conveniens or otherwise.

18.7. Sovereign Immunity. Nothing in this Agreement shall be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State of Iowa, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. The State of Iowa specifically retains and reserves the defense of sovereign immunity and all defenses available to it under State of Iowa and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

18.8. Waivers. All waivers hereunder must be made in writing by a duly authorized representative of the Party against whom the waiver is to operate, and failure at any time to require the other Party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver, in whole or in part, of any provision of this Agreement will not be considered to be a waiver of any other provision.

18.9. Severability. If any term of this Agreement is found to be unenforceable or invalid for any reason, all other terms will remain in full force and effect.

18.10. Construction. All headings used in this Agreement are for reference purposes only and are not part of this Agreement. All personal pronouns used herein, whether used in the feminine, masculine, or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, Subsection or other subpart. The words "include," "includes," "included," "including," "without limitation," or the phrase "e.g." shall not be construed as terms of limitation and shall, in all instances, be interpreted as meaning "including, but not limited to."

18.11. Exhibits, Statement(s) of Work and Addenda. All Exhibits, Statement(s) of Work, and Addenda that are referenced herein and appended hereto, or are signed by the Parties on or after the date of this Agreement, are hereby incorporated by reference. The following Exhibits are attached hereto and incorporated herein:

- Exhibit A Services; Fees;
- Exhibit B Statements of Work;
- Exhibit C Services Levels;
- Exhibit D Insurance;

18.12. RFP and Vendor's Proposal. The State of Iowa's Request for Proposal #1219009002 ("RFP") and Vendor's proposal dated [insert Date of Vendor's Response, if applicable] in response to the RFP ("Proposal"), together with any clarifications, attachments, appendices, or amendments to the RFP

and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of Vendor's exceptions, objections or proposed modifications respecting the RFP or any terms associated therewith (collectively "**Vendor Exceptions**") shall be incorporated into this Agreement unless expressly set forth herein. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any Vendor Exceptions shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or the State of Iowa hereunder, unless expressly stated herein. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP and associated documents; and third, by giving preference to the specific provisions of the Proposal (excluding any Vendor Exceptions that are not expressly made a part of this Agreement). The references to the parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered or stated in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the State shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the State.

18.13. Entire Agreement. This Agreement, as to its subject matter, exclusively and completely states the rights, duties and obligations of the Parties and supersedes all prior and contemporaneous representations, letters, proposals, discussions and understandings by or between the Parties. This Agreement may only be amended in a writing signed by both Parties. In particular, no shrink-wrap, click-wrap, browser-wrap, privacy policies, online terms or other terms and conditions or agreements ("**Additional Terms**") provided with or related to any Services, Deliverables, products, documentation, or software hereunder shall be binding on the State of Iowa, even if use of such items requires an affirmative "acceptance" of those Additional Terms before access or use is permitted. All Additional Terms shall be of no force or effect and shall be deemed rejected by the State of Iowa in their entirety.

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

18.15. Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by an internationally recognized courier service or, if between Parties located in the United States, mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, to the Parties at the addresses set forth herein. All notices under this Agreement that are addressed as provided in this Section 19.14 (Notices), (a) if delivered personally or by a nationally recognized courier service, will be deemed given upon delivery, or (b) if delivered by mail in the manner

described above, will be deemed given on the relevant Party's receipt of the notice. All notices shall be sent by certified mail or by personal delivery, to the following addresses:

If to Vendor:

If to the State of Iowa:

And a copy to (which shall not constitute notice):

Either Party may change its address or designee for notification purposes by giving notice to the other of the new address or designee and the date upon which such change will become effective.

18.16. Agreement Drafted By All Parties. This Agreement is the result of arm's length negotiations between the Parties and shall be construed to have been drafted by all Parties such that any ambiguities in this Agreement shall not be construed against either Party.

18.17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement.

18.18. Electronic Signatures and Facsimiles Binding. This Agreement and associated Statement(s) of Work and related documents may be accepted in electronic form (e.g., by an electronic or

digital signature or other means of demonstrating assent) and Vendor's acceptance will be deemed binding between the Parties. Vendor acknowledges and agrees it will not contest the validity or enforceability of this Agreement and associated Statement(s) of Work and related documents, including under any applicable statute of frauds, because they were accepted and/or signed in electronic form. Vendor further acknowledges and agrees that it will not contest the validity or enforceability of a signed facsimile copy of this Agreement and associated Statement(s) of Work and related documents on the basis that it lacks an original handwritten signature. Facsimile signatures shall be considered valid signatures as of the date hereof. Computer maintained records of a Party when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records.

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute this Software as a Service Agreement, which is effective as of the Effective Date.

STATE OF IOWA, acting by and through the Iowa
Department of Agriculture and Land Stewardship
("State of Iowa" or "State")

[Name of Vendor]
("Vendor")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

STATE OF IOWA, acting by and through the
Department of Administrative Services
("State of Iowa" or "State")

By: _____

Name: _____

Title: _____

EXHIBIT A—SERVICES; FEES

This Exhibit A (Services; Fees) is a part of and incorporated into the Software As A Service Agreement and Professional Services (“**Agreement**”) between the State of Iowa, acting by and through the Department of Administrative Services on behalf of the Iowa Department of Agriculture and Land Stewardship (“**State of Iowa**” or “**State**”), and [Name of Vendor], [entity type (e.g., limited liability company, limited liability partnership, or corporation)] (“**Vendor**”), dated _____, 2018. Unless otherwise specifically defined in this Exhibit A, all capitalized terms used herein shall have the meanings ascribed to them under the Agreement.

1. **Services other than Application Services.**

1.1. [E.g., Services under a Statement of Work, attached as an Exhibit B.];

1.2. [E.g., Support Services and Fees.];

2. **Application Services.**

2.1. The term “Application Services” shall mean access to and use of the following Vendor-hosted system software and services:

[Vendor: Please Describe Application Services.]

2.2. Application Service Fees (including Support Service Fees, if included; if not included, list separately under Section 1, above):

2.2.1 *Application Service 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 until after Go Live; provided, however, as set forth in Section 8.1.1 of the Agreement, if it is necessary for the State of Iowa or its Authorized Contractors to receive, hold, possess, and/or own either all or a portion of the licenses granted pursuant to Section 4.2 of the Agreement for any reason prior to Go Live, Vendor shall grant the State of Iowa and its Authorized Contractors the necessary license during any such period at no charge to the State.

2.2.2 *Subscription Fees after Go-Live.*

[Vendor: Please Describe Application Service Fees over the Term of the Agreement after Go-Live.]

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

3.1. Third Party Software:

[Vendor: Please describe any third party software.]

3.2. Other Third Party Intellectual Property:

[Vendor: Please describe any other intellectual property.]

DISCLAIMER: Sections 3 through 12 of this sample Statement of Work are merely examples of the types of terms and performance measures that may be included in a Statement of Work. Prior to executing a Statement of Work, this Exhibit should be tailored to fit the specific circumstances of the contemplated transaction to account for the specific needs, business requirements, and risks of any user(s) purchasing services pursuant to this Statement of Work.

EXHIBIT B—STATEMENT OF WORK NO. 1

This Statement of Work, effective as of the last signature date set forth below (“**SOW Effective Date**”), is a part of and incorporated into the Software As A Service and Professional Services Agreement (“**Agreement**”) between the State of Iowa, acting by and through the Department of Administrative Services on behalf of the Iowa Department of Agriculture and Land Stewardship (“**State of Iowa**” or “**State**”), and [Name of Vendor], [entity type (e.g., limited liability company, limited liability partnership, or corporation)] (“**Vendor**”), dated _____, 2018. Capitalized terms not defined in this Statement of Work are as defined in the Agreement.

1. Contacts.

Vendor Representative: _____
Address: _____

Telephone number: _____
Fax number: _____
Email address: _____

State of Iowa Representative: _____
Address: _____

Telephone number: _____
Fax number: _____
Email address: _____

2. Start Date.

Upon execution of the Agreement: _____, 2018

3. Description of Services and Deliverables. Vendor shall provide [Describe Services and Deliverables to be provided by Vendor]. This includes, but is not limited to:

4. Data Sources.

5. Data Migration.

6. Implementation.

7. Documentation. Vendor shall provide all documents and information required for the State and its Personnel to make use of the System, and the Deliverables and Services, including but not limited to:

8. Training.

8.1 Reports and Dashboards. Vendor shall provide sufficient training and current instructions to permit State staff to understand, interpret, and effectively navigate dashboards and reports.

9. State Responsibilities

9.1 The State shall commit staff and resources necessary for successful execution of the Agreement.

9.2 The State shall make IT staff and resources available to discuss and provide the necessary data fields required for the Services under the Agreement, to perform testing, and to define delivery protocols for data feeds.

9.3 The State shall determine, define, and execute communication and reporting protocols related to the Agreement.

9.4 The State shall identify applicable training requirements.

10. Industry Standards. Vendor shall perform all Services in a professional, workmanlike, and timely manner in accordance with the terms and conditions of this Agreement and applicable professional standards for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Agreement, the parties mutually agree the applicable specification shall be the generally accepted industry standard.

11. Personnel to Perform the Services. As part of the consideration for this Agreement, State is relying upon the personal skills of the key individuals identified in the Vendor's proposal to perform the services described in the scope of work. Except in the event of disability, illness, grave personal circumstances, or separation from service, the Vendor must receive the State's written approval prior to making any substitutions of key personnel who are identified herein as such by the Vendor during the term of this Agreement or any extensions thereof.

12. Cooperation. The State shall cooperate with the Vendor in the Vendor's performance of its services hereunder, including, without limitation, providing Vendor with reasonable facilities and timely access to data, information and state Personnel. The State shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of all data and information provided by the State.

13. Performance Measures

13.1 Vendor completes implementation according to timeline outlined in implementation schedule and shall be liable to the State in the following amount for failing to fulfill this requirement:

- Amount at risk – 5% of 1st year annual fee.

13.2 Vendor has no occurrence of unauthorized release of or access to Personal Information, and shall be liable to the State in the following amount for failing to fulfill this requirement:

- Amount at risk – 5% of fee for the Term in which the breach(s) occur plus payment in accordance with the terms of the Agreement.

13.3 Vendor must meet all service level requirements in Exhibit C and shall be liable to the State in the following amount for failing to fulfill this requirement:

- Amount at risk – defined in Exhibit C.

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute this Statement of Work, which is effective as of the SOW Effective Date.

STATE OF IOWA, acting by and through the Iowa
Department of Agriculture and Land Stewardship
("State of Iowa" or "State")

By: _____

Name: _____

Title: _____

[Name of Vendor]
("Vendor")

By: _____

Name: _____

Title: _____

STATE OF IOWA, acting by and through the
Department of Administrative Services
("State of Iowa" or "State")

By: _____

Name: _____

Title: _____

DISCLAIMER: This Service Level agreement is only a sample service level agreement. This Exhibit should be tailored to fit the specific circumstances of the contemplated transaction.

EXHIBIT C—SERVICE LEVELS

This Exhibit describes the performance standards and service levels to be achieved by Vendor in providing the Services: **[**This is based on vendor hosting the SaaS solution. If hosted by a third-party hosting provider, additional changes will be required.**]**

1. **Definitions.** Except as provided in this Exhibit, capitalized terms shall have the meanings set forth in the Agreement. The following terms, when used in this Exhibit, shall have the following meanings:

“**Available**” means the Services shall: (a) be available for access and use over the Internet by State of Iowa, Government Entities, State Users, and Users; and (b) provide the functionality required under the Agreement and applicable Statement(s) of Work.

“**Critical Hours**” means 6:00 a.m. to 11:00 p.m. CST, Monday through Friday.

“**Server**” shall mean the server(s) on which the Services will be hosted.

2. **General Hosting Obligations.** In addition to the other obligations set forth in the Agreement and this Exhibit, Vendor shall do the following:

a. Operate the Services on a Server owned and maintained by Vendor. **[**This, for example, and other obligations herein may need to be revised depending on whether Vendor will provide hosting services through a third-party hosting provider.**]**

b. Allow access to the Services over the Internet and provide secure and confidential storage of all information transmitted to and from the Services.

c. Supply hardware, security protocols, software and communications support structure to facilitate connection to the Internet in accordance with the requirements set forth herein.

d. Maintain a back-up server, at a geographically different site (e.g., different flood plain and power grid) from where the Server is located, to ensure continuous service in the event of disaster.

e. Review security notifications and alerts relevant to the hosting platform (e.g., Vendor notifications of bugs, attacks, patches), and apply any compensating controls and remedial measures to maintain the highest level of defense.

f. Vendor shall utilize state-of-the-art and up-to-date anti-virus and anti-malware software, and properly configured intrusion prevention systems and firewall protection devices in order to secure State of Iowa Confidential Information from unauthorized access by third parties.

3. **Service Monitoring & Management.** ****See previous comment.** This Section may need to be revised if Vendor will provide hosting services through a third-party hosting provider. Vendor will perform continuous monitoring and management of the Services to optimize availability of Services. Included within the scope of this section is the proactive monitoring of the Server and all service components of Vendor’s firewall for trouble on a 7 day by 24 hour basis, and the expedient restoration of components when failures occur within the time period set forth in Section 8 (Service Outages) of this Exhibit. Vendor shall maintain redundancy in all key components such that service outages are less likely to occur due to individual component failures.

Vendor will monitor “heartbeat” signals of all servers, routers and leased lines, and HTTP availability of the Server, by proactive probing at 30-second intervals 24 hours a day using an automated tool. If a facility does not respond to a ping-like stimulus, it shall be immediately checked again. When Vendor receives a “down” signal, or otherwise has knowledge of a failure in the Server or the application software and/or hardware, Vendor personnel will:

- a. Confirm (or disconfirm) the outage by a direct check of the facility;
- b. If confirmed, take such action as may restore the service in one hour or less, or, if determined to be a telephone company problem, open a trouble ticket with the telephone company carrier;
- c. Notify the State of Iowa by telephone or pager according to mutually agreed upon procedures that an outage has occurred, providing such details as may be available, including the Vendor trouble ticket number, if appropriate, and time of outage;
- d. Work through the problems until resolution, escalating to appropriate management or to engineering as required;
- e. Notify the State of Iowa of final resolution, along with any pertinent findings or action taken, and request concurrence by the State of Iowa prior to closing the applicable trouble ticket.

4. **Backups.** Vendor shall provide for both the regular back-up of standard file systems relating to the Server and Services, and the timely restoral of such data on request by the State of Iowa due to a site failure. In particular, Vendor shall:

- a. Perform weekly full back-ups;
- b. Perform daily incremental back-ups;
- c. Send back-up media to secured, off-site storage facilities with a thirty (30) day rotation of media;
- d. Retain one back-up tape per month for one year;
- e. Fulfill restoral requests as directed by the State of Iowa due to site failures. Such restoral will be performed within the interval of twelve (12) to twenty-four (24) hours depending on the urgency of the request, and the agreed upon location of the desired backup media; and
- f. If the Server or hosting location is expected to be down for more than twenty-four (24) hours, Vendor shall immediately transfer appropriate back-up data and re-establish all hosting operations in an appropriately functioning secondary server or location. Such secondary server and/or location shall be subject to the State of Iowa’s approval and consent, which shall not be unreasonably withheld.

5. **Service Levels.**

- a. Support Request Service Levels. Vendor shall Respond to and Resolve Support Requests as set forth below.
 - i. Support Requests. The State of Iowa shall classify its requests for Error Corrections consistent with the descriptions below. Each such request shall be referred to herein as a “**Support Request.**” The State of Iowa shall notify Vendor of Support Requests via a Vendor-specified telephone number, email address, or other Vendor-provided mechanisms. All Vendor technical support personnel providing telephone support must do so in a manner such that the communication does not diminish the State of Iowa’s ability to effectively utilize the Application Services or negatively impact the satisfaction of the users with the Application Services. Such impacts could arise from technology issues such as delays or jitter in telecommunication lines, or the failure of the Vendor technical support personnel to provide support in standard American English with understandable accents or otherwise demonstrate sufficient language skills as reasonably determined by the State of Iowa.

Support Request Classification	Description
Critical	<ul style="list-style-type: none"> ▪ Issue affecting entire system; ▪ Issue affecting single critical production function, such as, for example, [list single critical production functions that would constitute a “Critical” Support Request classification]; ▪ System down or operating in materially degraded state; ▪ Potential services to Users affected; ▪ Data security or integrity at risk; ▪ Material financial impact; ▪ Declared a Critical Support Request by the State of Iowa CIO or designee; and/or ▪ Widespread access interruptions.
High	<ul style="list-style-type: none"> ▪ Primary workflow module failure that materially impairs its performance; and/or ▪ Data entry or access is materially impaired on a limited basis.
Medium	<ul style="list-style-type: none"> ▪ System is operating with minor issues that can be addressed with a work around.
Low	<ul style="list-style-type: none"> ▪ Request for assistance, information, or services that are routine in nature.

ii. *Support Response Time Service Level.* **“Response Time”** shall be measured from the time when Vendor receives the Support Request until the time Vendor has Responded to the Support Request. **“Respond”** means that Vendor has engaged on the Support Request; is working continuously to diagnose the corresponding Errors, formulate a plan to address any such Errors, and execute that plan; and has notified the State of Iowa user originating the Support Request that such support has begun, in the manner requested by the user originating the Support Request (e.g., e-mail, phone) or, if a specific means of communication is not requested, using direct interactive (person to person) method of communication to achieve contact with such user (e.g., no email or automated voicemail). **[**Service level credits should be converted to a dollar amount prior to the execution of the Agreement.**]**

Support Request Classification	Service Level Metric (Response Time)	Service Level Credits
Critical	100% (15) minutes	<p>0.5% of monthly Application Service fees for the initial service level failure and .05% of monthly Application Service fees for each additional fifteen (15) minute increment that begins after the initial service level failure</p> <p>[**Provide example using specific dollar amounts applicable to the contemplated transaction. For example (assuming total monthly Application Service fees are \$1,000) the State of Iowa issues Vendor a Critical Support Request at 3:00 p.m. Vendor responds that same day forty-six (46) minutes later. The State of Iowa is entitled to a \$6 Service Level Credit. $\\$1,000 * .005 = \\5.00 for the initial service level failure, and $\\$1,000 * .0005 = \\0.50 for each of the, in this case two (2), subsequent service level failures: $\\$5.00 + \\$0.50 + \\$0.50 = \\6.00.**]</p>

High	100% (30) minutes	<p>0.1% of monthly Application Service fees for the initial service level failure and 0.01% of monthly Application Service fees for each additional fifteen (15) minute increment that begins after the initial service level failure</p> <p>** Provide example using specific dollar amounts applicable to the contemplated transaction. See preceding example.**</p>
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iii. Resolution Time Service Level. Resolution time shall be measured from the time when Vendor receives the Support Request until the time Vendor has Resolved the Support Request. “**Resolve**” means that, as to Errors, Vendor has provided the State of Iowa the corresponding Error Correction and the State of Iowa has confirmed such Error Correction.

Support Request Classification	Service Level Metric (Resolution Time)	Service Level Credits
Critical	100% (4) hours	<p>5% of monthly fees for the initial service level failure and 0.5% of monthly fees for first additional one (1) hour increment that begins after the initial service level failure and doubling for each additional (1) hour</p> <p>**Provide example using specific dollar amounts applicable to the contemplated transaction. See preceding example.**</p>
High	100% (8) hours	<p>2.5% of monthly fees for the initial service level failure and 0.25% of monthly fees for each additional one (1) hour increment that begins after the initial service level failure</p> <p>**Provide example using specific dollar amounts applicable to the contemplated transaction. See preceding example.**</p>
Medium	100% (2) days	<p>1% of monthly fees for the initial service level failure and 0.1% of monthly fees for each additional one (1) day increment that begins after the initial service level failure</p> <p>**Provide example using specific dollar amounts applicable to the contemplated transaction. See preceding example.**</p>
Low	100% (5) days	<p>0.5% of monthly fees for the initial service level failure and 0.05% of monthly fees for each additional one (1) day increment that begins after the initial service level failure</p>

iv. Escalation. With respect to any Critical Support Request, until Resolved, Vendor shall escalate that Support Request within sixty (60) minutes of Receipt to the appropriate Vendor support personnel (as designated by Vendor), including, as applicable, Vendor's SVP of Client Operations.

v. Availability Service Level. The Application Services shall be Available for the percentage of the time each month of the Term of the Agreement as set forth below. **[**These service levels and credits are highly customizable depending on how critical the services are. The example below is for moderately high critical applications. Options include removing steps for each month of failure or different availability percentages and steps. Additionally, this can be tailored to have a single availability percentage for critical and non-critical hours. The service level credits currently specified represent the high side of what is reasonable.**]**

Service Level Metric	Service Level Credits
<p>At a minimum, 99.9% Availability for the Application Services in each calendar month of the term of the Agreement during Critical Hours.</p> <p>“Availability” means the number of hours the Application Services are Available For Use during Critical Hours in a given calendar month expressed as a percentage of Critical Hours during a calendar month (i.e., Availability % = ((Number of Critical Hours – Downtime during Critical Hours)/(Number of Critical Hours)) x 100%).</p> <p>“Downtime” means the aggregate duration of Outages for the Application Services during the applicable Scheduled Uptime during a calendar month.</p> <p>“Outage” means any time during which the Application Services (or any portion thereof) is not Available For Use during a calendar month, measured from the earliest point in time that such Outage is or reasonably should be detected by Vendor, but in any event no later than the time the Outage actually occurred. An Outage is an Error. An Outage also constitutes a Critical Support Request.</p> <p>“Scheduled Downtime” shall have the meaning ascribed to it in Section 8.1 of this Exhibit.</p> <p>“Unscheduled Downtime” shall mean an Outage that is not Schedule Downtime..</p> <p>“Scheduled Uptime” shall mean any time during a Calendar month that is not Scheduled Downtime.</p> <p>“Available For Use” shall mean the ability of the Application Services to be utilized or accessed as contemplated under the Agreement(s), including conformance to the Specifications, and without material degradation of performance, but excluding Scheduled Downtime.</p>	<p>In the event 99.9% Availability during Critical Hours for the Application Services is not achieved, but at least 98.0% Availability for the Application Services during Critical Hours is achieved, then the credits shall be incurred as follows:</p> <p>10% of monthly Application Services fees for the first month,</p> <p>15% of monthly Application Services fees for the second consecutive month, and</p> <p>20% of monthly Application Services fees for the third consecutive month and each consecutive month thereafter.</p> <p>In the event at least 98% Availability for the Application Services during Critical Hours is not achieved, but at least 95.0% Availability during Critical Hours for the Application Services is achieved then the credits shall be incurred as follows:</p> <p>20% of monthly Application Services fees for the first month,</p> <p>25% of monthly Application Services fees for the second consecutive month, and</p> <p>30% of monthly Application Services fees for the third consecutive month and each consecutive month thereafter.</p> <p>In the event at least 95% Availability during Critical Hours for the Application Services is not achieved, then the credits shall be incurred as follows:</p> <p>20% of monthly Application Services fees for the first month, and</p> <p>25% of monthly Application Services fees for the second consecutive month,</p> <p>30% of monthly Application Services fees for the third consecutive month and each consecutive month thereafter.</p> <p>[**Provide two to three examples using specific dollar amounts applicable to the contemplated transaction. See preceding example.**]</p>

vii. Availability during non-Critical Hours.

Service Level Metric	Service Level Credits
<p>At a minimum, 97% Availability for the Application Services in each calendar month of the term of the Agreement.</p> <p>“Downtime,” “Outage,” “Unscheduled Downtime,” “Scheduled Downtime” “Scheduled Uptime” and “Available For Use” shall each of the meaning defined above.</p> <p>“Availability”, for purposes of this paragraph 5.2.2, means the actual number of hours the Application Services are Available For Use during Scheduled Uptime in a given calendar month expressed as a percentage of Scheduled Uptime during a calendar month (i.e., Availability % = ((Number of hours the Application Services are actually Available For Use during Scheduled Uptime – Downtime during Scheduled Uptime)/(Number of hours the Application Services are actually Available For Use during Scheduled Uptime)) x 100%).</p>	<p>In the event 97% Availability for the Application Services is not achieved, but at least 93% Availability for the Application Services is achieved, then the credits shall be incurred as follows:</p> <p>20% of monthly Application Services fees for the first month, and</p> <p>25% of monthly Application Services fees for the second consecutive month, and</p> <p>30% of monthly Application Services fees for the third consecutive month and each consecutive month thereafter.</p> <p>In the event at least 93%% Availability for the Application Services is not achieved, then the credits shall be incurred as follows:</p> <p>40% of monthly Application Services fees for the first month, and</p> <p>45% of monthly Application Services fees for the second consecutive month, and</p> <p>50% of monthly Application Services fees for the third consecutive month and each consecutive month thereafter.</p> <p>Provide two to three examples using specific dollar amounts applicable to the contemplated transaction. See preceding example.</p>

b. Unscheduled Downtime Reporting. Vendor shall track and report monthly to the State of Iowa each Unscheduled Downtime.

c. Application Services Download Times. Vendor represents, warrants, and covenants that the download time for a page of the Services during Critical Hours shall be: **Similar to the availability service levels, there is significant customization that may occur here, including but not limited to the amount of credits and the required download time. Alternatively, there can be different response times for different activities related to the services, such as different required response times for login v. accessing a record or changing a record.**

Service Level Metric	Service Level Credits
<p>During Critical Hours: At a maximum, the lesser of (a) 0.5 seconds above the KB40, or (b) three (3) seconds.</p>	<p>In the event these average Download Times are not achieved, 3% of the monthly fees.</p>
<p>During non-Critical Hours: At a maximum, the lesser of (a) 0.8 seconds above the KB40, or (b) four (4) seconds.</p>	<p>In the event these average Download Times are not achieved, 3% of the monthly fees.</p>

“**Download Time**” means the average time to download any page related to the Services, including all content contained therein. 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.

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 installed. Vendor shall supply the State of Iowa with the results of these tests on a monthly basis. Vendor further agrees to provide, at no cost to the State of Iowa, measurement tools capable of directly making all measurements necessary to apply the Application Services Response Time warranty in this Section.

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

e. Meetings. Vendor and the State of Iowa shall meet **weekly or as scheduled [specify means]** to review the status of open Support Requests, and discuss trends and issues relating to Support Requests and approaches to reducing the number of Support Requests as well as improving both the State of Iowa and Vendor responses to such Support Requests.

f. Additions, Deletions, and Modifications of Service Levels. After the initial six (6) months following the Effective Date, the State of Iowa may add, modify, or delete service levels specified herein by sending written notice to Vendor at least ninety (90) days in advance; provided that, the total number of such notices (which notices may contain multiple changes) sent by the State of Iowa pursuant to this Section 5.7 (Additions, Deletions, and Modifications of Service Levels) shall not exceed twenty (20) in any contract year.

g. Service Levels Added. Service Levels shall be added in accordance with the following:

- a. Where data exists for at least six (6) months from which measurements can be derived, the State of Iowa and Vendor shall review the measurement trends and the levels of quality that were attained during the measurement period and shall work together in good faith to mutually agree, and to establish the service level standard that Vendor will be required to meet; or
- b. Where no such data exists, the Parties shall attempt in good faith to mutually agree during a thirty (30) day period on a service level standard using industry standard measures or third party vendor advisory services.

6. Service Level Failures and Service Level Credits.

a. Service Level Failures. Failure to achieve any of the service levels described in Section 5 (Service Levels) of this Exhibit shall constitute a “**Service Level Failure**” and Vendor shall be liable for the Service Level Credits in the amounts set forth in Section 5 (Service Levels). Vendor shall not be responsible for any Service Level Failure caused by the State of Iowa or its agents. Vendor shall promptly notify the State of Iowa of any Service Level Failure.

b. Service Level Credits. Upon the occurrence of any Service Level Failure, Vendor shall issue to the State of Iowa a credit in the amount set forth in Section 5 (Service Levels) (“**Service Level Credit**”). If more than one (1) Service Level Failure has occurred in a single month, the sum of the corresponding Service Level Credits shall be credited to the State of Iowa. In no event will the aggregate of all Service Level Credits arising as a result of failures by Vendor to perform its Support Services obligations in any month exceed 25% of the amount of the Support Services fees otherwise payable for the most recent three (3) month period except for instances of Service Level Credits associated failures on “Critical” and “High” Resolution Time service levels which will not exceed 100% of the amount of the said Support Services fees. Vendor shall notify the State of Iowa in writing if the State of Iowa becomes entitled to a Service Level Credit, which notice shall be included in the monthly performance reports as described in this Exhibit.

The total amount of Service Level Credits that Vendor will be obligated to pay to the State of Iowa, with respect to Service Level Failure(s) occurring each month shall be reflected on the invoice issued in the second month following the month during which the Service Level Failure(s) giving rise to such Service Level Credit(s) occurred. Notwithstanding the foregoing, the calculation of such Service Level Credit(s) shall be based on the credit amounts in effect, and the Support Services fees for, the month during which the Service Level Failure occurred. For example, the amount of Service Level Credits payable with respect to Service Level Failures occurring in August shall be set forth in the invoice issued in October, but shall be calculated using August data. In the event the State of Iowa prepays for any Services more than one month in advance, Vendor will issue refunds or credits to the State of Iowa at the State’s sole discretion, within [redacted] days of the end of the month in which the Service Level Failure occurred.

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

7. **Corrective Action Plan**. In the event two (2) or more Critical Support Requests occur in any thirty (30) calendar day period during the Term of the Agreement, or in the event of any Service Level Failure, Vendor shall promptly investigate the root causes of such support issues and shall provide to the State of Iowa within five (5) business days of the occurrence of the second Critical Support Request or the occurrence of the Service Level Failure an analysis of such root causes and a proposed corrective action plan for the State of Iowa’s review, comment, and approval (the “**Corrective Action Plan**”). The Corrective Action Plan shall include, at a minimum: (a) a commitment by Vendor to devote the appropriate time, skilled Vendor personnel, systems support and equipment, and/or resources to remedy, and prevent any further occurrences of Critical Support Request issues; and (b) time frames for implementation of the Corrective Action Plan. There shall be no additional charge (other than those fees set forth in this Agreement(s)) for Vendor’s implementation of such Corrective Action Plan in the time frames and manner set forth in the Corrective Action Plan.

8. **Service Outages**.

a. Scheduled. Vendor shall notify the State of Iowa of scheduled outages at least twenty-four (24) hours in advance, and such outages shall last no longer than one hour. Such outages shall be scheduled between the hours of 1:00 a.m. and 5:00 a.m., CST on Saturday nights (“**Scheduled Downtime**”). Vendor may request extensions of scheduled down time above one (1) hour and such approval by the State of Iowa, which may not be unreasonably withheld or delayed. Unscheduled outages (such as the kind described in Section 9 of this Exhibit below) are not excluded from the Availability service levels set forth above (i.e., an Unscheduled outage, except due to the actions of the State of Iowa and its agents, shall not relieve Vendor of its obligation to achieve the service levels set forth herein).

9. **Security Breaches**. In the event of an attack or threatened or suspected breach of security against the Services and/or Server, Vendor will take whatever reasonable steps that are necessary to halt such action, including taking the Services down. Down time due to external attacks shall not count against Availability requirement set forth above. Vendor will immediately contact the person designated by the State of Iowa to discuss what measure to take. However, if time is critical, action may be required before the contact can be reached. Vendor’s actions will include, as appropriate:

- a. Confirm the threat;
- b. Deny access from the source of the attack;
- c. Investigate the extent of the damage, if any;

- d. Back-up the affected systems and those suspected to be affected;
- e. Strengthen defenses everywhere, not just the suspected path that the attacker used;
- f. Contact the ISP where the threat or attack originated and/or law enforcement to work with Vendor's security team;
and
- g. Produce an Incident Report within 24 hours detailing Vendor's findings.
- h. Re-instate the denial of access after a set time period, but continue to monitor traffic from that source until risk of further attacks is deemed to be minimized.

EXHIBIT D—INSURANCE

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 Exhibit. 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 but not limited to 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 Exhibit, 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 Each Occurrence	\$15 million \$5 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. 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 Exhibit and Section 17 (Insurance) of 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 except for the policy for the Errors and Omissions Insurance.

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 Exhibit and Section 17 (Insurance) of the Agreement, neither the 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 Exhibit and the Agreement.