

REQUEST FOR PROPOSAL

RFP COVER SHEET

Administrative Information:

TITLE OF RFP:	Schools Interoperability Framework (SIF) solution	RFP Number:	1219282004
Agency:	Dept. of Administrative Services on behalf of Iowa Department of Education (IDOE)		
State seeks to purchase:	State-wide, vendor-hosted Schools Interoperability Framework (SIF) solution	Available to Political Subdivisions?	No
Number of mos. or yrs. of the initial term of the contract:	1 year	Number of possible annual extensions:	5
Approximate initial contract term beginning:	Date: Dec. 1, 2018	Approximate Ending:	Date: Nov. 30, 2019
State Issuing Officer:			
Name: Ken Discher			
Phone e-Mail and Fax: P: (515) 281-6380 email: ken.discher@iowa.gov F: (515) 725-2064			
Mailing Address: Department of Administrative Services Central Procurement and Fleet Services Enterprise Hoover Bldg – Level 3 1305 E Walnut St Des Moines, IA 50319			
PROCUREMENT TIMETABLE—Event or Action:		Date/Time (Central Time):	
State Posts Notice of RFP on TSB website		Date: Sept. 4, 2018	
State Issues RFP		Date: Sept. 6, 2018	
RFP written questions, requests for clarification, and suggested changes from Contractors due: (email questions, etc., to: Ken.Discher@iowa.gov) Agency’s written response to RFP questions, requests for clarifications and suggested changes Approximate posting date:		Date: 12PM Central on Sept. 14 Date: Sept. 26	
Proposals Due Date:		Date: Oct. 17, 2018	
Proposals Due Time:		Time: 12 PM Central	
Approximate Date to issue Notice of Intent to Award:		Date: Nov. 12	
Approximate Date to execute contract:		Date: Dec. 1	
Relevant Websites:	Web-address:		
Internet website where Addenda to this RFP will be posted:	http://bidopportunities.iowa.gov/		
Internet website where contract terms and conditions are posted:	http://bidopportunities.iowa.gov/		

Number of Copies of Proposals Required to be Submitted:	1 Original, 1 Digital, & 2 Copies
Firm Proposal Terms Per Section 3.2.11, the minimum Number of Days following the deadline for submitting proposals that the Contractor guarantees all proposal terms, including price, will remain firm:	180 Days

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SECTION 1 INTRODUCTION

1.1 Purpose

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

1.2 Definitions

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

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

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

“Contractor” means a vendor submitting a Proposal in response to this RFP.

“Agency” or “Department” means the Iowa Department of Administrative Services.

“General Terms and Conditions” means the General Terms and Conditions for Services sections of the RFP.

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

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

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

“State” means the State of Iowa, the Agency identified on the Contract Declarations & Execution Page(s), and all state agencies, boards, and commissions, and any political subdivisions making purchases from the Contract as permitted by this RFP.

1.3 Overview of the RFP Process

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

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

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

1.4 Background Information

The Iowa Department of Education (IDOE), a State Education Agency (SEA), serves both a regulatory and advisory role in Iowa’s education system. IDOE collects significant amounts of data to enable the functions necessary to serve these two roles. The data collected is used to create information spanning a broad array of domains and operations such as student enrollment, district funding, graduate and dropout data, multiple assessments and screeners, accountability determinations, adherence to accreditation requirements, and several reporting systems for re-disclosure to all organizational levels within the education system and to the general public. Within the State of Iowa, there are approximately 550,000 preschool through twelfth grade students that attend 330 public school districts within 1,600+ public school buildings and 175 accredited non-public schools in Iowa. Over 34,000 educators teach in public schools within the state. A vast majority of school districts and non-public schools in Iowa use one of three Student Information Systems (SIS); these three SIS vendors are JMC, PowerSchool, and Infinite Campus.

Statewide collection of student-level data began Fall 2004 with student identifier, student enrollment, and program participation the targets of the first collections. Student-level collection rapidly expanded to include course enrollment, graduate information, dropout information, discipline records, and much more. With a growing need to streamline data collection, and to meet demand for more timely data, IDOE implemented a School Interoperability Framework (SIF) data collection system. Student identifier and student enrollment were the first collections to move to the new SIF system beginning in the 2012-2013 academic year. Use of SIF in Iowa expanded again with the implementation of a Multi-Tiered Support System (MTSS) in the 2014-15 academic year. The MTSS utilizes real-time, event-driven, data exchange to enable immediate rostering of students, screening eligibility, and aggregate reporting.

IDOE has committed to streamlining and improving its SIF infrastructure to facilitate more-efficient use of data in the face of ever-increasing demand while also dealing with the realities of reduced funding, staff, and resources. These improvements will reduce redundancies in the system while also providing additional new components aimed to increase operational efficiency. Throughout this improvement project, mission-critical systems already using SIF-based data collections must seamlessly integrate with the improved infrastructure, experiencing as little disruption as possible during any transition process. IDOE wishes to move quickly on this project, with an aggressive timeline and expectations.

As an aid to the Respondent, a description of the existing SIF operations and architecture in use at IDOE follows. As stated previously, IDOE wishes to streamline and improve design and function relative to existing architecture. With this Request for Proposal, IDOE asks the Respondent to

propose and describe a design for those improvements as well as incorporating an organization-wide infrastructure, not simply a replication of the existing implementation.

Currently, IDOE uses two distinct SIF data collection systems. These systems rely on two distinct Zone Integration Servers (ZIS's). One ZIS feeds current State Reporting and Student Locator functions. Another assessment delivery system relies on rostering information acquired through SIF. Nearly every public district and a majority of non-public buildings are currently connected to both of these data collection systems. No architectural component exists where the two data collection systems are unified. SIF data transfers between districts and buildings and IDOE data systems currently conform to SIF NADM 2.4 specifications. Under this project we seek to support a 3.x infrastructure.

IDOE desires the establishment of a single SIF data collection system. IDOE desires the establishment of a single, unified Operational Data Store (ODS) that would be integrated with the single data collection system. At a minimum, State Reporting, Student Locator, and assessment rostering functions must integrate with the single data collection system. Flexibility to include student transcripts and/or functionality to use SIF data to aide in teacher and staff security assignments is also desired. The Respondent should describe how these functions will integrate with the ODS. The Respondent should also provide illustrative materials to help clarify the proposed solution and architecture.

IDOE staff maintain an internal governance board dedicated to ensuring standardized expectations from systems providing data to IDOE via SIF. The members of this governance board will be considered stakeholders for the execution of this project.

1.5 RFP Goals and Objectives

The intent of this project is to re-implement and expand the Iowa Department of Education's (IDOE) existing School Interoperability Framework (SIF) data collection infrastructure and architecture.

Goals

- Establish a reliable data collection system for long-term use, enabling continuous system improvement while simultaneously ensuring the ongoing effective operations of existing critical IDOE functions
- Increase operational efficiency through an effort to simplify, streamline, and unite data collection operations
- Expand the capabilities of existing data collection architecture by adding new components to be leveraged for use in multiple existing IDOE functions and enabling the expanded and more effective use of data collected

Objectives

- Establish, deploy, and support a SIF-based data collection infrastructure for Iowa's K-12 education system
- Provide functionality necessary to support IDOE mission-critical operations including but not limited to student identifier management, K-12 student data collections, and real-time data integration with dependent downstream systems

- Establish an organizational Operational Data Store (ODS) as a component of the collection infrastructure to support current IDOE operations and for rapid incorporation into upcoming projects requiring expanded data use
- Reduce costs through consolidation of redundant systems or components
- Eliminate redundant processes necessary to maintain and operate those redundant systems or components
- Contractor will have SIF zones set-up and operational in all school districts and participating non-public school student information systems (SIS) in Iowa by March 1, 2019
- Contractor will have the solution developed for IDOE testing by May 1, 2019. Full implementation of the solution is planned for July 1, 2019.

SECTION 2 ADMINISTRATIVE INFORMATION

2.1 Issuing Officer

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

2.2 Restriction on Communication

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

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

2.3 Downloading the RFP from the Internet

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

2.4 Procurement Timetable

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

2.5 Questions, Requests for Clarification, and Suggested Changes

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

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

2.6 Amendment to the RFP

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

2.7 Amendment and Withdrawal of Proposal

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

2.8 Submission of Proposals

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

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

2.9 Proposal Opening

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

2.10 Costs of Preparing the Proposal

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

2.11 No Commitment to Contract

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

2.12 Rejection of Proposals

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

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

2.13 Nonmaterial Variances

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

2.14 Reference Checks

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

2.15 Information from Other Sources

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

2.16 Verification of Proposal Contents

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

2.17 Proposal Clarification Process

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

2.18 Disposition of Proposals

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

2.19 Public Records and Requests for Confidential Treatment

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

2.20 Form 22 - Request for Confidentiality

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

2.21 Copyright Permission

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

2.22 Release of Claims

By submitting a Proposal, the Contractor agrees that it will not bring any claim or cause of action against the Agency based on any misunderstanding concerning the information provided in the RFP or concerning the Agency's failure, negligent or otherwise, to provide the Contractor with pertinent information in this RFP.

2.23 Contractor Presentations

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

2.24 Evaluation of Proposals Submitted

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

2.25 Award Notice and Acceptance Period

Notice of Intent to Award the Contract(s) will be sent to all Contractors submitting a timely Proposal and may be posted at the website shown on the RFP cover sheet. Negotiation and execution of the Contract(s) shall be completed no later than thirty (30) days from the date of the Notice of Intent to Award or such other time as designated by Agency. If the successful Contractor fails to negotiate and deliver an executed Contract by that date, the Agency, in its sole discretion,

may cancel the award and award the Contract to the remaining Contractor the Agency believes will provide the best value to the State.

2.26 No Contract Rights until Execution

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

2.27 Choice of Law and Forum

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

2.28 Restrictions on Gifts and Activities

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

2.29 No Minimum Guaranteed

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

2.30 Post Solicitation Debriefing

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

2.31 Appeals

A Respondent whose Proposal has been timely filed and who is aggrieved by the Notice of Intent to Award of the Department may appeal the decision by filing a written notice of appeal (in accordance with 11—Chapter 117.20, Iowa Administrative Code) to: The Director of the Department of Administrative Services, Hoover State Office Building, Des Moines, Iowa 50319-0104 and a copy to the Issuing Officer. The notice must be filed within five (5) days of the date of the Notice of Intent to Award issued by the Department, exclusive of Saturdays, Sundays, and legal state holidays. The written notice may be filed by fax transmission to 515.725.2064. The notice of appeal must clearly and fully identify all issues being contested by reference to the page, section and line number(s) of the RFP and/or the Notice of Intent to Award. A notice of appeal may not stay negotiations with the apparent successful Contractor.

SECTION 3 FORM AND CONTENT OF PROPOSALS

3.1 Instructions

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

- 3.1.1** The Proposal shall be typewritten on 8.5" x 11" paper and sent in sealed envelope. The Proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal. The Technical Proposal and the Cost Proposal shall be labeled as such and placed in a separate sealed envelope. The envelopes shall be numbered in the following fashion: 1 of 4, 2 of 4, etc. The envelopes (and the outside of the entire RFP package) shall be labeled with the following information:

RFP Number: 1219282004
RFP Title: School Interoperability Framework (SIF) system
Issuing Officer Name: Ken Discher
Lead Agency Address: Department of Administrative Services
Central Procurement & Fleet Services Enterprise
1305 E Walnut St., Hoover Bldg - Level 3
Des Moines IA 50319

[Contractor's Name and Address]

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

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

Technical Proposal Envelope Contents

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

Cost Proposal Envelope Contents

Original Cost Proposal
Cost Proposal on digital media

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

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

3.1.4 Attachments shall be referenced in the Proposal.

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

3.2 Technical Proposal

The following documents and responses shall be included in the Technical Proposal in the order given below. Items listed in Section 3.2 will be considered in the evaluation of the Technical Proposals:

3.2.1 Transmittal Letter (Required)

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

3.2.2 Table of Contents

The Contractor shall include a table of contents of its Proposal and submit the check list of submittals per Attachment #4.

3.2.3 Executive Summary

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

3.2.3.1 Statements that demonstrate that the Contractor has read, understands and agrees with the terms and conditions of the RFP including the Contract provisions in Section 6.

3.2.3.2 An overview of the Contractor's plans for complying with the specifications of this RFP.

3.2.3.3 Any other summary information the Contractor deems to be pertinent.

3.2.4 Mandatory Specifications and Scored Technical Specifications

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

3.2.5 Vendor Background Information

The Contractor shall provide the following general background information:

- 3.2.5.1** When awarding a bid opportunity, does your state have a preference for in-state vendors? (Example: Providing to an in-state vendor a % advantage/discount off their cost proposal.) Yes or No. If yes, please include the details of the preference.
- 3.2.5.2** Name, address, telephone number, fax number and e-mail address of the Contractor including all d/b/a's or assumed names or other operating names of the Contractor and any local addresses and phone numbers.
- 3.2.5.3** Form of business entity, e.g., corporation, partnership, proprietorship, limited liability company.
- 3.2.5.4** State of incorporation, state of formation, or state of organization.
- 3.2.5.5** The location(s) including address and telephone numbers of the offices and other facilities that relate to the Contractor's performance under the terms of this RFP.
- 3.2.5.6** Number of employees.
- 3.2.5.7** Type of business.
- 3.2.5.8** Name, address and telephone number of the Contractor's representative to contact regarding all contractual and technical matters concerning the Proposal.
- 3.2.5.9** Name, address and telephone number of the Contractor's representative to contact regarding scheduling and other arrangements.
- 3.2.5.10** Name, contact information and qualifications of any subcontractors who will be involved with this project the Contractor proposes to use and the nature of the goods and/or services the subcontractor would perform.
- 3.2.5.11** Contractor's accounting firm.
- 3.2.5.12** The successful Contractor will be required to register to do business in Iowa before payments can be made.
For vendor registration documents, go to:
<https://das.iowa.gov/procurement/vendors/how-do-business>

3.2.6 Termination, Litigation, Debarment

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

- 3.2.6.1** Has the Contractor had a contract for goods and/or services terminated for any reason? If so, provide full details regarding the termination.
- 3.2.6.2** Describe any damages or penalties assessed against or dispute resolution settlements entered into by Contractor under any existing or past contracts for goods and/or services. Provide full details regarding the circumstances, including dollar amount of damages, penalties and settlement payments.
- 3.2.6.3** Describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Contractor to engage in any business, practice or activity.
- 3.2.6.4** A list and summary of all litigation or threatened litigation, administrative or regulatory proceedings, or similar matters to which the Contractor or its officers have been a party.
- 3.2.6.5** Any irregularities discovered in any of the accounts maintained by the Contractor on behalf of others. Describe the circumstances and disposition of the irregularities.

Failure to disclose these matters may result in rejection of the Proposal or termination of any subsequent Contract. The above disclosures are a continuing requirement of the Contractor. Contractor shall provide written notification to the Agency of any such matter commencing or occurring after submission of a Proposal, and with respect to the successful Contractor, following execution of the Contract.

3.2.7 Criminal History and Background Investigation

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

3.2.8 Acceptance of Terms and Conditions

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

3.2.9 Certification Letter

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

3.2.10 Authorization to Release Information

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

3.2.11 Firm Proposal Terms

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

3.3 Cost Proposal

The Contractor shall provide its Cost Proposal in a separately sealed envelope for the proposed goods and/or services. See Attachment #5.

3.3.1 Payment Methods

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

3.3.1.1 Credit card or ePayables

The State of Iowa's Purchasing Cards (Pcards) and ePayable solution (EAP) are commercial payment methods utilizing the VISA credit card network. The State of Iowa will not accept price changes or pay additional fees if Contractor uses the Pcard or EAP payment methods. Pcard-accepting Contractors must abide by the State of Iowa's Terms of Pcard Acceptance, as provided in Section 6.7 of the RFP. Contractors must provide a statement regarding their ability to meet the requirements in this subsection, as well as identifying their transaction reporting capabilities (Level I, II, or III).

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

Contractors shall provide a statement regarding their ability to accept payment by EFT by ACH. Payments are deposited into the financial institution of the claimant's choice three working days from the issue date of the direct deposit.

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

3.3.1.3 State Warrant

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

3.3.2 Payment Terms

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

3.3.3 Contractor Discounts

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

3.3.3.1 Prompt Payment Discount

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

3.3.3.2 Cash Discount

The State may consider cash discounts when scoring Cost Proposals.

SECTION 4 SPECIFICATIONS

Overview

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

4.1 Mandatory (Pass/Fail) Specifications

All items listed in this section are Mandatory Specifications. Contractors must mark either **“yes”** or **“no”** to each specification in their Proposals. By indicating **“yes”** a Contractor agrees that it shall comply with that specification throughout the full term of the Contract, if the Contractor is successful. In addition, if specified by the specifications or if the context otherwise requires, the Contractor shall provide references and/or supportive materials to verify the Contractor’s compliance with the specification. The Agency shall have the right to determine whether the supportive information and materials submitted by the Contractor demonstrate the Contractor will be able to comply with the Mandatory Specifications. If the Agency determines the responses and supportive materials do not demonstrate the Contractor will be able to comply with the Mandatory Specifications, the Agency may reject the Proposal. Contractors may subcontract with other companies in order to meet these mandatory specifications. Contractors that decide to subcontract shall provide information about each such company including background, experience and expertise which helps meet the mandatory specifications. Contractors are responsible to assure that all work done by a subcontractor company meets the requirements of the RFP and resulting agreement with the State. **Contractor must be able to meet the specifications of EACH Mandatory Specification in this section or the Lead Agency may reject the Proposal.**

4.1.1 Contractor proposed solution must support SIF NADM versions 2.4 through 3.x

4.1.2 Contractor proposed solution must support both real-time (event) and request/response data collections

4.1.3 The proposed solution must include one or more operational data stores (ODS) to retain:

- Original XML messages
- Repository of all data received

4.1.4 The proposed solution must integrate with the Department’s security portal and the State of Iowa’s Enterprise Authentication and Authorization system for both IDOE and district/school user access

- 4.1.5** The proposed solution must implement data validations to ensure all data conform to the current Iowa SIF Profile before they are saved to the data repository ODS
- 4.1.6** Contractor's proposed solution must comply with all Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA) requirements, including those specific to storage and use of personally identifiable information (PII)
- 4.1.7** Contractor must agree to host the solution and provide continued maintenance of the system as long as a contract with IDOE is in place:

4.2 Scored Technical Specifications

All items listed below are Scored Technical Specifications. All specifications will be evaluated and scored by the evaluation committee in accordance with Section 5. For each specification within Section 4.2, Contractors shall provide a short narrative and give examples pertaining to how they will meet the specification. Where helpful, Contractors are encouraged to include screen capture images, use case diagrams, swim lane diagrams, business process diagrams, etc., to illustrate how the Contractor proposed solution meets a specific specification.

4.2.1 SIF Implementation and Infrastructure

Describe the Respondent's experience with a large SIF implementation. Responses should include, but are not limited to:

- Description of the project
- Years in production with full implementation
- Version(s) of SIF used
- Number of zones and systems integrated
- Data volume
- Data transport speed
- Data storage and ODS structure
- Administrative tools provided to the customer
- Describe how the proposed solution will use a SIF 3.x infrastructure while also supporting data transfer with other systems that support SIF 2.x
- Describe how the proposed solution will include other data format upload options (.xlsx, .csv, .txt, etc.) so that the data is incorporated into the 3.x SIF infrastructure and the ODS

4.2.2 System Tools for State Administrators

- Describe how the proposed solution can provide IDOE staff the tools to assist in management and operation of the system, including but not limited to:
 - Create and maintain SIF zones
 - Query and view XML messages
 - Query and view data in the ODS
 - Create, view, and export aggregate reports from data in the ODS
 - Initiate and control SIF transactions with other systems, including:
 - Requests for very specific, filtered data (data for a particular student, teacher, class, grade, etc.)
 - Requests for a particular object for the entire state, for a subset of zones, or for zones of a particular student information system

- Ability to isolate and hold SIF messages
 - Clear SIF queues
 - Monitor zone/agent status across the state
- Describe how the proposed solution will provide IDOE and district/school staff tools, including but not limited to:
 - User friendly notifications, views, and exports of error messages for:
 - zone/agent connectivity issues
 - data validation issues
 - Verification of zone/agent status
 - Initiation of SIF transactions with the solution
 - Unit level and aggregated ODS data reports and exports
 - Allow IDOE staff to mimic all reports and views that are available to district/school staff

4.2.3 Records Support

- Describe how the solution will support transcript and/or student record exchange objects and data
- Describe how the solution will support the creation of roster records for other end systems that link teachers and students in courses
- Describe how the solution will support the creation of staff records to support access to other end systems

4.2.4 State Reporting

- Describe how the proposed solution will move data from the ODS to IDOE-defined state reporting data tables including:
 - Unit level data tables
 - Aggregation of data for summary tables
 - State reporting specific data transformations
 - State reporting specific data validations
 - Reports and exports from the state reporting tables at the unit and aggregate levels available to IDOE and district/school staff
- Describe how the proposed solution will integrate the ability for IDOE or district/school staff to selectively update specific records in state reporting tables based on SIF data (such as only update records for specific students, schools, date ranges, etc.), while keeping other data static
- Describe how the proposed solution will provide IDOE administrative tools to:
 - Create and maintain state reporting look-up tables
 - Query data in state reporting tables
 - Create, view, and export unit and aggregate reports from state reporting tables
 - Create and maintain data validations specific to state reporting including those at the field-level, across fields, across tables, and across the system
- Describe how the proposed solution will provide IDOE and district/school staff tools, including but not limited to:
 - User-friendly notification, views, and export of:
 - State reporting data validation issues
 - Unit level and aggregated state reporting data reports

- Allow IDOE staff to mimic all reports and views that are available to district/school staff

4.2.5 Student Locator Specifications

- Describe how the proposed solution will interact with Iowa's implementation of eScholar Uniq-ID to contribute to the choreography and notification of student identifier assignments and near match resolution
- Describe solution's ability to send SIF messages to local SISs and other end systems in order to write-back assigned state IDs to those systems
- Describe ability for IDOE and district/school staff to search for students by name, local ID, or state ID
- Describe how the proposed solution will provide district/school staff tools related to student locator, including but not limited to:
 - User-friendly notification, views and export of:
 - Student locator data validation issues
 - Pending, waiting-for-review, completed, and failed student identifier assignments
 - Unit level and aggregated student locator data reports

4.2.6 Project Plan and Management

- Describe the proposed communication plan between the Contractor and IDOE including periodic updates, implementation meetings, and on-site coordination. Include the schedule, method of communication, and proposed personnel to be included.
- Provide a proposed Project Implementation Schedule based on weekly milestones, including projected timelines listed in Sec. 1.5 RFP Goals and Objectives
- Describe the Contractor's Project Management Plan and how the Contractor project manager will keep the project on track
- Describe the Contractor's proposed phases of development including requirements gathering, design, implementation, quality assurance, enhancements, bug fixes, and ongoing maintenance of the system
- Describe how changes in schedule, scope, quality or budget are handled by the Contractor
- Describe the proposed risk management process
- Identify any third parties involved in Contractor's implementation strategy and describe the relationships

4.2.7 Personnel

- Provide resumes of key Contractor staff that will work on the proposed solution
- Describe the roles key Contractor staff will provide in developing, implementing and supporting the proposed solution
- Provide reference contact information from three (3) previous customers or clients knowledgeable of the Contractor's performance in providing goods and/or services similar to the goods and/or services described in this RFP. Include contact name, address, phone, and email address & a brief description of the work contractor did for the reference. State expects to contact references.

4.2.8 Training and Support

- Provide a training plan for initial implementation that includes time, materials, and modes of training for:
 - Technical training provided to IDOE system administrators
 - Training provided to IDOE staff who then train district/school end users (train-the-trainer model).
- Describe the following aspects of system support:
 - Expectations of IDOE and Contractor staff to identify system issues and provide user support
 - Collaboration between IDOE and Contractor staff to create and maintain support content
- Describe the skills and estimated number of hours per week required by IDOE personnel for initial installation and ongoing implementation of the proposed system
- Describe Contractor response and resolution times for the following issue levels:
 - Level 1 Critical: Any error or problem causing the Application Services to be unavailable in a manner that affects a vast majority of Users
 - Level 2 Major: Any error or problem causing the Application Services to be unavailable in a manner that affects a substantial number of Users.
 - Level 3 Minor: Any error or problem related to the functionality of the Application Services which does not cause the Application Services to become materially unavailable to Users. For example, when a minor defect is reported.
 - Level 4 Informational: Any error or problem not covered in levels 1–3, above. For example, a question about how to use a certain function related to the Application Services.

SECTION 5 EVALUATION AND SELECTION
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5.1 Introduction

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

5.2 Evaluation Committee

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

5.3 Technical Proposal Evaluation and Scoring

All Technical Proposals will first be reviewed to determine if they comply with the Mandatory (Pass/Fail) Specifications in Section 4.1. The Technical Proposals will then be evaluated and scored on the Scored Technical Specifications described in Section 4.2. To be deemed a Responsive Proposal, the Proposal must:

- Answer “Yes” to all parts of Section 4.1 and include supportive materials as required to demonstrate the Contractor will be able to comply with the Mandatory Specifications in that section and
- Obtain the minimum score required in Section 4.2 of the Technical Proposal.

An addendum identifying the points assigned to evaluation criteria and the minimum score required will be posted prior to the RFP due date and time.

5.4 Cost Proposal Scoring

After the Technical Proposals are evaluated and scored, the Cost Proposals of contractors that obtained the minimum required score will be opened and scored.

To assist the agency in evaluating, Cost Proposals may be evaluated and points awarded as follows. The Cost Proposals will remain sealed during the evaluation of the Technical Proposal and any Demonstration. The compliant prospective contractor’s technical points will be added to the cost points, to obtain the total points awarded for the proposal. The Cost Proposals will be ranked from cheapest to the most expensive. The cheapest shall receive the maximum number of points available in this section. To determine the number of points to be awarded all other Cost Proposals, the cheapest proposal will be used in all cases as the numerator. Each of the other proposals will be used as the denominator. The percentage will then be multiplied by the maximum number of points and the resulting number will be the cost points awarded to other compliant contractors. Percentages and points will be rounded to the nearest whole value.

Example:

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

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

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

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

SECTION 6 CONTRACT TERMS AND CONDITIONS

6.1 Contract Terms and Conditions

The Contract that the Agency expects to award as a result of this RFP shall comprise the specifications, terms and conditions of the RFP, written clarifications or changes made in accordance with the provisions of the RFP, the General Terms and Conditions (Attachments 6 – 9), the offer of the successful Contractor contained in its Proposal, and any other terms deemed necessary by the Agency. No objection or amendment by a Contractor to the provisions or terms and conditions of the RFP or the General Terms and Conditions shall be incorporated into the Contract unless Agency has explicitly accepted the Contractor's objection or amendment in writing.

The Contract terms and conditions in this Section 6 and the General Terms and Conditions will be incorporated into the Contract. The General Terms and Conditions may be supplemented at the time of contract execution and are provided to enable Contractors to better evaluate the costs associated with the RFP specifications and the Contract. All costs associated with complying with these specifications should be included in any pricing quoted by the Contractor.

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

The Agency reserves the right to either award a Contract(s) without further negotiation with the successful Contractor or to negotiate Contract terms with the successful Contractor if the best interests of the State would be served.

6.2 Contract Length

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

6.3 Terms and Conditions for State of Iowa Purchasing Cards

The State of Iowa shall pay Contractor's invoices using its Purchasing Card Program (Pcard) whenever possible. The Pcard is a VISA credit card issued by U.S. Bank to allow authorized employees to make purchases on behalf of the State. It is a faster, more convenient alternative to traditional invoicing and remittance processing, allowing US Bank to pay the Contractor directly, generally within 48 hours of the transaction. Contractor shall comply with security measures for Pcard payments including:

- Contractor shall comply with Payment Card Industry Data Security Standard (PCI DSS) to assure confidential card information is not compromised;
- Contractor shall adhere to Fair and Accurate Credit Transactions Act requirements that limit the amount of consumer and account information shared for greater security protection;

- Contractor shall not write down card numbers or store card information. When accepting orders by phone, Contractor shall process the transaction during the call and send itemized receipts (excluding card numbers) to the cardholder by fax, email, or mail (with delivery);
- Contractor shall process payment for items when an order is placed only for items currently in stock and available for shipment, and only for services already rendered;
- Contractor shall confirm that the name of purchaser matches the name on the card;
- Contractor shall ensure Internet orders are processed via secure websites, featuring Verisign, TRUSTe, BBBOnline, or “https” in the web address;
- Contractor shall shred any documentation with credit card numbers.

Attachment # 1
Certification Letter

Alterations to this document are prohibited, see section 2.12.14.

[Date]

Issuing Officer Name: Ken Discher
Agency: Dept. of Administrative Services
Agency Address: Department of Administrative Services
Central Procurement and Fleet Services Enterprise
Hoover Bldg – Level 3
1305 E Walnut St
Des Moines IA 50319

Re: RFP1219282004 - PROPOSAL CERTIFICATIONS

Dear Ken Discher:

I certify that the contents of the Proposal submitted on behalf of **[Name of Contractor]**_____ (Contractor) in response to **Agency** for RFP1219282004 for School Interoperability Framework (SIF) system are true and accurate. I also certify that Contractor has not knowingly made any false statements in its Proposal.

Certification of Independence

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

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

Certification Regarding Debarment

6. I certify that, to the best of my knowledge, neither Contractor nor any of its principals: (a) are presently or have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency; (b) have within a three year period preceding this Proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving

stolen property; (c) are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this Proposal had one or more public transactions (federal, state, or local) terminated for cause.

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

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

7. Pursuant to *Iowa Code sections 423.2(10) and 423.5(4) (2016)* a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under *Iowa Code chapter 423* on all sales of tangible personal property and enumerated services. The Act also requires Contractors to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

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

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

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

Sincerely,

Signature

Name and Title of Authorized Representative

Date

Attachment #2
Authorization to Release Information Letter
Alterations to this document are prohibited, see section 2.12.14.

[Date]

Issuing Officer Name: Ken Discher
Agency: Dept. of Administrative Services
Agency Address: Department of Administrative Services
Central Procurement and Fleet Services Enterprise
Hoover Bldg – Level 3
1305 E Walnut St
Des Moines IA 50319

Re: RFP1219282004 - AUTHORIZATION TO RELEASE INFORMATION

Dear Ken Discher:

[Name of Contractor]_____ **(Contractor)** hereby authorizes the **Agency** ("Agency") or a member of the Evaluation Committee to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Contractor in response to **RFP1219282004**.

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

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

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

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

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

Sincerely,

Signature

Name and Title of Authorized Representative

Date

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

THIS FORM 22 (FORM) MUST BE COMPLETED AND INCLUDED WITH YOUR PROPOSAL. THIS FORM 22 IS REQUIRED WHETHER THE PROPOSAL DOES OR DOES NOT CONTAIN INFORMATION FOR WHICH CONFIDENTIAL TREATMENT WILL BE REQUESTED. FAILURE TO SUBMIT A COMPLETED FORM 22 WILL RESULT IN THE PROPOSAL TO BE CONSIDERED NON-RESPONSIVE AND ELIMINATED FROM EVALUATION. COMPLETE PART 1 OF THIS FORM 22 IF PROPOSAL DOES NOT CONTAIN CONFIDENTIAL INFORMATION. COMPLETE PART 2 OF THIS FORM 22 IF PROPOSAL DOES CONTAIN CONFIDENTIAL INFORMATION.

1. Confidential Treatment Is Not Requested

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

2. Confidential Treatment of Information is Requested

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

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

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

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

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

Part 1 – No Confidential Information Provided

Confidential Treatment Is Not Requested

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

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

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

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

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

Part 2 - Confidential Treatment is Requested

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

NOTE:

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

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

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

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

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

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

Company

RFP Number

RFP Title

Signature (required)

Title

Date

**Attachment #4
Response Check List**

RFP REFERENCE SECTION	RESPONSE INCLUDED		LOCATION OF RESPONSE
	Yes	No	
3. Three (3) paper copies and one digital media of the Technical Bid Proposal			
3. Three (3) paper copies and one digital media of the Cost Proposal			
3. One (1) Public Technical Copy (one paper and one digital media) with Confidential Information Excised (if applicable)			
3. Transmittal Letter			
3. Table of Contents			
3. Executive Summary			
3. Vendor Background Information			
3. Termination, Litigation, Debarment			
3. Criminal History and Background Investigation			
3. Acceptance of Terms and Conditions			
3. Completed Certification Letter (Attachment #1)(required)			
3. Completed Authorization to Release Information (Attachment #2)(required)			
3. Firm Proposal Terms			
4. Completed Mandatory Specifications (required)			
4. Completed Scored Technical Specifications (required)			
2. Completed Attachment #3 – Form 22 (required)			
3. Completed Attachment #5 – Cost Proposal (required)			

**ATTACHMENT #5
Cost Proposal**

Payment Terms

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

What discount will you give for payment in 15 days?

What discount will you give for payment in 30 days?

Cost Proposal

Contractor’s Cost Proposal shall include an all-inclusive, itemized, total cost in U.S. Dollars for a period of six years (including all travel, expenses, etc. in prices). All pricing to be FOB Destination, freight cost and all expenses included; and based on Net 60 Days Payment Terms. The following template is required. Please use additional pages to provide any additional narrative clarity and support for the costing information. The narrative should provide an explanation of costs listed in applicable categories. The State of Iowa reserves the right to negotiate final costs with the awarded contractor.

Cost proposals must include the following:

- For each of years 1-6, provide costs for the following, as applicable, in the table format below. The costs should be inclusive of all costs to the State of Iowa for the proposed solution, excluding any costs for items listed in Exhibit A - Additional Services (Contractor to complete and attach IF Applicable).
 - System development
 - System hosting
 - Respondent provided training
 - System maintenance
 - Licensing fees
 - User support provided by Respondent
- Provide an annual total cost as well as an all-inclusive years 1-6 total cost

Item	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Years 1 through 6 Total
System Development							
System Hosting							
Contractor Provided Training							
System maintenance							
Licensing fees							
User support provided by Contractor (Year 1 after Go Live date – No Charge)							
Total cost							

Costs for Additional Services

For any items discussed and listed in Exhibit A - Additional Services (Attach IF Applicable), provide an annual and all-inclusive total cost across years 1-6 for each item.

Additional Costs

Any proposed additional costs in categories not listed in the table should be listed in a separate table on a separate page attached to this Cost Proposal.

Per Hour Rate (For any additional required enhancements that the State determines are within the scope of the RFP but outside the scope of the base cost proposal and agreement)

\$ _____

In addition, Contractor may supply the State of Iowa DOE with products, equipment, hardware, Software, or related services that DOE wants to buy through Contractor or Contractor Sub-Contractors, directly or indirectly, which are not expressly identified in the RFP or Proposal, but which are generally deemed incidental to the total transaction and related thereto (“Sourced Goods” or “Open Market Items”). Please describe any Sourced Goods or Open Market Items you know you may be able to provide DOE, and supply corresponding pricing in your cost proposal. Please also provide a discount off of your standard list price you would be willing to extend to DOE for any additional Source Goods or Open Market Items you do not expressly identify in your proposal, but may in the future offer or be willing to offer.

ATTACHMENT #6 TERMS AND CONDITIONS
Iowa Department of Education SIF System

This Agreement for a SIF System is made and is effective as of the date identified on the Contract Declarations and Executions Page (CD&E) (“Effective Date”), by and between the State of Iowa, acting by and through the Iowa Department of Education (“DOE” or “State”), and _____, a corporation organized under the laws of _____ (“Vendor”). The parties may be referred to herein individually as a “Party” or collectively as the “Parties.” The Parties agree to the following:

1. Overview

1.1. Purpose

This Agreement establishes terms and conditions pursuant to which DOE may procure a Schools Interoperability Framework System (“SIF System”), as contemplated by the RFP and in accordance with the Proposal, for the following key goals and objectives, across all educational levels and areas in the State of Iowa, to:

- Establish, deploy, and support a SIF-based data collection infrastructure for Iowa’s K-12 education system
- Provide functionality necessary to support IDOE mission-critical operations including but not limited to student identifier management, K-12 student data collections, and real-time data integration with dependent downstream systems
- Establish an organizational Operational Data Store (ODS) as a component of the collection infrastructure to support current IDOE operations and for rapid incorporation into upcoming projects requiring expanded data use
- Reduce costs through consolidation of redundant systems or components
- Eliminate redundant processes necessary to maintain and operate those redundant systems or components
- Contractor will have SIF zones set-up and operational in all school districts and participating non-public school student information systems (SIS) in Iowa by March 1, 2019
- Contractor will have the solution developed for IDOE testing by May 1, 2019. Full implementation of the solution is planned for July 1, 2019.

1.2. Term

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

2. Definitions

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

“Acceptance” means DOE has determined a portion of Deliverables provided under a Purchasing Instrument satisfy its Acceptance Tests. **“Final Acceptance”** means DOE has determined all Deliverables provided under a Purchasing Instrument satisfy DOE’s Acceptance Tests. **“Non-acceptance”** means DOE has determined that a portion of Deliverables provided under a Purchasing Instrument have not satisfied DOE’s Acceptance Tests.

“Acceptance Criteria” means the specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, and/or other criteria

designated by DOE and against which Acceptance Tests are conducted, including but not limited any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, to the extent applicable the RFP and Proposal, any Documentation, and any applicable state, federal, foreign and local laws, rules and regulations.

“Acceptance Tests” or “Acceptance Testing” means the tests, reviews and other activities that are performed by or on behalf of DOE to determine whether Deliverables meet Acceptance Criteria or otherwise satisfy DOE, as determined by DOE in its sole discretion.

“Agreement,” unless the context requires otherwise, means the collective documentation memorializing the terms of the agreement identified on the CD&E and all other attachments to the CD&E.

“Authorized Contractors” means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by DOE to use, maintain, support, modify, enhance, host, or otherwise assist DOE or any other a Governmental Entity with any Deliverables provided hereunder.

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

“Customer Data” means all information, data, materials, or documents (including Confidential Information of or belonging to DOE or any other Governmental Entity) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from a Governmental Entity making purchases hereunder or otherwise utilizing the System or supplying information to the System, including the Authorized Contractors of DOE or any other Governmental Entity, related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor, directly or indirectly, in connection with any Deliverables provided hereunder and all originals and copies of any the foregoing.

“Customer Property” means any property of or belonging to DOE or any other Governmental Entity, including Customer Data and Customer-Owned Deliverables, software, hardware, programs or other property possessed, owned, or otherwise controlled or maintained by DOE or any other Governmental Entity.

“Customer-Owned Deliverables” means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of DOE or for a specific project under this Agreement, including but not limited to the System and corresponding Source Code and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto.

“Deficiency” means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related to a Deliverable, including any failure of a Deliverable to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

“Deliverables” means all of the goods, Services, Software, work, work product, items, materials, and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with this Agreement, including Sourced Goods or Open Market Items, any System(s), and Documentation.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, implementation documents, project plans, and all other information, documentation, and materials discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel hereunder or otherwise related to or used in conjunction with any Deliverables, in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.

“Enhancements” shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications or other enhancements made to or with respect to the System(s) (including any new releases or versions related thereto) or other Deliverables provided or made available by Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, and all changes to any Documentation made by Vendor, directly or indirectly, as a result of such Enhancements.

“Governmental Entity” shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity includes Participating Agencies, agencies, independent agencies, the Legislative Branch, Judicial Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government. For purposes of this Agreement, and in addition to the foregoing, a Governmental Entity also expressly includes all public schools within the State of Iowa and Area Education Agencies (“AEAs”).

“I.T. Governance Document(s)” or “Governance Document(s)” means any Information Technology policies, standards, processes, guidelines, or procedures developed by OCIO pursuant to Iowa Code section 8B, available at: <https://ocio.iowa.gov/> (navigate to policies, standards, rules, respectively), and which are generally applicable to Participating Agencies, absent a waiver granted pursuant to Iowa Code section 8B.21(5) and corresponding implementing rules, or any agency-specific policies, standards, processes, guidelines, or procedures developed by DOE.

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

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

“Purchasing Instrument” means documentation issued by DOE to Vendor for the purchase of Deliverables under this Agreement, including a “Purchase Order” or “Statement of Work” executed hereunder (See Attachment __ for a sample Statement of Work), regardless of form, and which identifies the specific Deliverables to be purchased and any other requirements or Acceptance Criteria deemed necessary by DOE, such as compensation and delivery dates.

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

“Security Breach” means the unauthorized acquisition of or access to Customer Data by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. “Security Breach” shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.

“Services” may include:

The System;

Implementation Services;

Integration Services necessary to integrate the System with the DOE’s single sign-on system and Education Portal for user authentication and authorization;

Integration Services with DOE’s School Interoperability Framework (“SIF”) solution to transfer data from local school district student information systems and to/from state data system (assessment systems, longitudinal data warehouse, IEP/IFSP system, state ID system, etc.) as defined by the DOE;

Hosting services of and for the System provided by and through Vendor, directly or indirectly, including through a third-party hosting provider identified by Vendor, subject to the consent and approval of DOE;

Ongoing maintenance and support Services; and

Any other services included within the Scope of the RFP and Proposal.

“Service Level Agreement” or “SLA” means Special Terms and Conditions attached hereto and incorporated by reference herein defining the level of Service, in terms of quality, availability, and response times, expected of Vendor’s, directly or indirectly, delivery of the System.

“Software” means any and all other software, programs, applications, modules and components, in object code form, all related Documentation, Enhancements, and Source Code and all copies of the foregoing.

“Source Code” means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.

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

“Sourced Goods” or “Open Market Items” means products, equipment, hardware, Software, or related services DOE wants to buy through Vendor or Vendor Contractors, directly or indirectly, but which are not expressly identified in the RFP or Proposal, but which are generally deemed incidental to the total transaction.

“System” means the MTTs Data System and related components as further described in Section 1.1 (Purpose), the RFP, and Vendor’s Proposal.

“Third Party” means a person or entity (including, any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

“Vendor Personnel” means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Deliverables under this Agreement.

“Vendor Contractor(s)” means any of Vendors authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Deliverables under this Agreement.

“Warranty Period” means the five-year (5) period commencing the date the applicable DOE provides Vendor written notice of Final Acceptance for the System and Deliverables.

3. Deliverables

3.1. Purchasing Instruments

3.1.1. Performance

Vendor, Vendor Contractors, and Vendor Personnel shall commence, complete, and deliver all work and provide all Deliverables available under the RFP and Proposal in accordance with the deadlines, timelines, terms, conditions, Acceptance Criteria and other requirements set forth in this Agreement, any Purchasing Instrument(s) executed by a DOE hereunder, any Service Level Agreement, other Special Terms and Conditions, applicable Documentation, or any related attachments or documents attached hereto or associated herewith, including a project plan or other similarly captioned document. Except as otherwise set forth herein or in a Service Level Agreement attached as Special Terms and Conditions hereto, performance standards, monitoring, and review provisions applicable to specific projects are as set forth in the applicable Purchasing Instrument.

3.1.2. Delivery

3.1.2.1. Risk of Loss

To the extent any Deliverables, including but not limited to equipment or hardware installed or provided by Vendor to facilitate DOE’s or other Governmental Entities’ effective use of the System, are mailed or shipped, Vendor or Vendor Contractors shall bear all freight, shipping, handling, insurance, and installation, and removal costs for the delivery and shall bear all risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.

3.1.2.2. Source Code and Documentation

Vendor acknowledges and agrees that it or Vendor Contractors shall deliver and provide to DOE all Source Code and Documentation related to the System and any Software or other Deliverables as Customer-Owned Deliverables in accordance that are created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, unless otherwise agreed to in writing by DOE.

3.1.3. Equipment

All equipment or hardware sold to DOE or otherwise deployed by Vendor, directly or indirectly, hereunder, including but not limited to Sourced Goods or Open Market Items, whether originating with Vendor, Vendor Contractors, or other Third Parties, necessary or desirable to be acquired for the effective use of any Deliverables provided hereunder. Vendor represents and warrants the following with respect to all equipment:

- 3.1.3.1.** Any equipment or hardware provided hereunder will be new and unused;
- 3.1.3.2.** To the extent of any sale, title to such equipment or hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions;
- 3.1.3.3.** DOE's use and possession of such equipment or hardware will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Vendor; and
- 3.1.3.4.** Such equipment or hardware will be free of any rightful claim of any Third Party based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

3.1.4. Software

Vendor shall ensure that all Software provided hereunder is licensed to DOE pursuant to a license agreement, the terms and conditions of which are acceptable to DOE.

3.1.5. Third Party

Vendor shall take all action necessary to ensure DOE is able and entitled to receive and enjoy all warranties, indemnities, or other benefits associated with any equipment, hardware, or Software (including Sourced Goods and Open Market Items) sold to DOE by or through a Third Party hereunder. At DOE's request, Vendor shall assign to DOE all of licensor's and manufacturer's warranties, indemnities, or other associated benefits pertaining to such equipment, hardware, or Software (including Sourced Goods and Open Market Items) under any related license or other agreement between Vendor and the applicable Third Party.

3.1.6. Amendments to Purchasing Instruments

A Purchasing Instrument may be amended, modified, or replaced at any time during the Term of this Agreement upon the mutual written consent of Vendor and DOE.

3.1.7. Change Order Procedure

DOE may at any time request a modification to the scope of a Purchasing Instrument using a change order. The following procedures for a change order shall be followed:

3.1.7.1. Written Request

DOE shall specify in writing the desired modifications to the Purchasing Instrument with the same degree of specificity as in the original Purchasing Instrument.

3.1.7.2. Vendor's Response

Vendor shall submit to DOE any proposed modifications to the Purchasing Instrument and a firm cost proposal, if applicable, for the requested change order within five (5) business days of receiving the DOE's change order request.

3.1.7.3. Effect of Change Order

Both Parties must sign and date the change order to authorize the change in Deliverables described therein and incorporate the changes into the applicable Purchasing Instrument and this Agreement. No Deliverables shall be provided pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both Parties. Upon such execution, a change order shall alter only that portion of a Purchasing Instrument to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement.

3.2. System

3.2.1. The System shall be considered a software as a service system that is maintained, supported, and hosted by the vendor during the length of contract.

3.2.2. Grant of License

Vendor grants, or shall otherwise ensure the following license is granted by the appropriate Third Party, to DOE and its Authorized Contractors for DOE's business activities, a non-exclusive license to: (i) access for purposes of use and, to the extent necessary, maintain and support, the hosting environment from which the System shall be housed and operate during the Term.

3.2.3. Configuration

Vendor will modify, maintain, configure, and enhance the System to satisfy DOE's specific needs in accordance with the terms and conditions of the Purchasing Instrument(s) and requirements of the RFP and Vendor's Proposal.

3.2.4. DOE Not Required to Accept or Install Enhancements

Vendor shall not condition DOE's rights or Vendor's obligations under this Agreement, or any other contract related to Deliverables, on DOE accepting or installing any Enhancements related to the System provided by Vendor, directly or indirectly.

4. Compensation and Additional Rights and Remedies.

4.1. Pricing/Compensation

The fees for the Deliverables shall be as established in the RFP and Proposal and applicable Purchasing Instrument(s). Failure of DOE to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of any Services so long as payment of such undisputed fees is made within applicable cure period. For the avoidance of doubt, in the event of any dispute related to fees, Vendor shall continue to perform and provide Deliverables 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.

4.2. No Additional Fees

Except to the extent permitted by Section 4.1 Pricing/Compensation, DOE shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement or any Purchasing Instrument(s). For the avoidance of doubt, there shall be no reimbursable expenses associated with this Agreement, and Vendor shall be solely responsible for all other costs, charges, and expenses it incurs in connection with this Agreement, including equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other operational and administrative costs and expenses.

4.3. Satisfactory Deliverables

Vendor is not entitled to payment for any Deliverable(s), in whole or in part, provided under this Agreement or any Purchasing Instrument(s) if DOE reasonably determines that such Deliverable(s) has not been satisfactorily or completely delivered or performed, or that such Deliverable(s) fails to meet or conform to any applicable Acceptance Criteria or that there is a material Deficiency with respect to such Deliverable(s).

4.4. Effect of Purchasing Instruments

In no event shall DOE be obligated to pay Vendor any fees, costs, compensation, or other amounts in excess of the amount specified in a Purchasing Instrument for any one or more Deliverable(s), unless DOE otherwise agrees to pay such fees, costs, compensation, or other amounts pursuant to a written Change Order or an amendment to the applicable Purchasing Instrument executed by DOE.

4.5. Payment does not Imply Acceptance

No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from DOE shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against DOE or the State of Iowa.

4.6. Invoices

Upon receipt of written notice of Acceptance from DOE with respect to one or more Deliverable(s), Vendor shall submit an invoice to DOE requesting payment of the fees or other compensation specified in the Purchasing Instrument associated with such Deliverable(s), less any Retained Amount(s) to be withheld in accordance with Section 4.6 (Retention). All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges, or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by DOE. DOE shall verify Vendor's performance/provisioning of Deliverables outlined in the invoice before making payment. DOE shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code 8A.514 and corresponding implementing rules, regulations, and policies. DOE may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code § 8A.514. Notwithstanding anything herein to the contrary, DOE shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if DOE believes the invoice is inaccurate or incorrect in any way.

4.7. Retention

To secure Vendor's performance under this Agreement, DOE may retain 15% of the fees or other compensation associated with each Deliverable provided under a Purchasing Instrument ("Retained Amounts") until all Deliverables under such Purchasing Instrument have been supplied/provided and DOE has given Final Acceptance. Retained Amounts shall be payable upon DOE's delivery of written notice of Final Acceptance, subject to the terms and conditions hereof.

4.8. Erroneous Payments and Credits

Vendor shall promptly pay or refund to DOE the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Vendor or notification by DOE of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due DOE under this Section, DOE may charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount otherwise allowed by law, whichever is greater. DOE may, in its sole discretion, elect to have Vendor apply any amounts due and owing DOE under this Section against any amounts payable by DOE under this Agreement.

4.9. Set-off Against Sums Owed by Vendor

In the event Vendor owes DOE any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, DOE may set off such sum against any sum invoiced to DOE by Vendor in the Governmental Entity's sole discretion. Any amounts due DOE as damages may be deducted by DOE from any money or sum payable by DOE to Vendor pursuant to this Agreement or any other agreement between Vendor and DOE.

4.10. Withholding Payments

In addition to pursuing any other remedy provided herein or by law, DOE may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to DOE or work stoppage by Vendor, in the event DOE determines:

4.10.1. Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or

4.10.2. Any Deliverable has failed to meet or conform to any applicable Acceptance Criteria or contains or is experiencing a Deficiency.

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

4.11. Correction/Cure

DOE may correct any Deficiencies with respect to any Deliverable(s) or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from DOE. DOE may procure the Deliverable(s) reasonably necessary to correct any Deficiencies or cure any Vendor default, in which event Vendor shall reimburse DOE for the actual costs incurred by DOE for such Deliverable(s) or cure, including the reasonable value of the time expended by DOE's personnel or its Authorized Contractors to secure substitute Deliverable(s) or cure such default. In addition, Vendor shall cooperate with DOE or any Third Parties retained by DOE which assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor's.

4.12. Error Correction

With respect to each notice from DOE to Vendor during the Term that notifies Vendor that any Deliverable(s) provided by Vendor, including those previously accepted by DOE, contains or experiences a Deficiency, Vendor shall, at no cost to DOE, promptly:

4.12.1. Correct the Deficiency and repair the affected Deliverable(s); and

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

5 Acceptance Tests, Project Management, and Program Management

5.1. Acceptance Testing

All Deliverables shall be subject to DOE's Acceptance Testing and Acceptance, as may be further described in a Purchasing Instrument(s). Upon completion of all work to be performed by Vendor with respect to any Deliverable or group of Deliverables, Vendor shall deliver a written notice to DOE certifying that the Deliverable(s) meets and conforms to applicable Acceptance Criteria and is ready for DOE to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable(s) to determine that it meets and operates in accordance with applicable Acceptance Criteria prior to delivering such notice to DOE. At DOE's request, Vendor shall assist in performing Acceptance Tests at no additional cost to DOE. Within a reasonable period of time after DOE has completed its Acceptance Testing, DOE shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable evaluated during such Acceptance Testing. If DOE determines that a Deliverable(s) satisfies its Acceptance Tests, DOE shall provide Vendor with notice of Acceptance with respect to such Deliverable(s). If DOE determines that a Deliverable(s) fails to satisfy its Acceptance Tests, DOE shall provide Vendor with notice of Non-acceptance with respect to such Deliverable(s). In the event DOE provides notice of Non-acceptance to Vendor with respect to any Deliverable(s), Vendor shall correct and repair such Deliverable(s) and submit it to DOE within ten (10) days of Vendor's receipt of notice of Non-acceptance so DOE may re-conduct its Acceptance Tests with respect to such Deliverable(s). In the event DOE determines after re-conducting its Acceptance Tests with respect to any Deliverable(s) that Vendor has attempted to correct or repair pursuant to this Section that such Deliverable fails to satisfy its Acceptance Tests, then DOE shall have the continuing right, at its sole option, to:

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

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

5.2. Project Management and Reporting

5.2.1. Vendor or Project Manager

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

5.2.2. Review Meetings

Vendor's Project Manager shall meet weekly with DOE's project manager and representatives, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor or performance issues. At each review meeting, Vendor's Project Manager shall provide a status report, which shall include, at minimum, the information described in Section 5.2.3 and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any Party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance under this Agreement.

5.2.3. Reports

Vendor shall provide DOE with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information DOE may request. Vendor's proposed format and level of detail for its status reports shall be subject to DOE's approval.

5.2.4. Problem Reporting Omissions

DOE'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 DOE may have. DOE's failure to identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance or constitute Acceptance under this Agreement.

6. Ownership and Intellectual Property

6.1. Ownership of Vendor-Owned Deliverables

Except as specifically granted in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Vendor shall own all Deliverables that were independently and exclusively developed by Vendor prior to the Effective Date of this Agreement ("Vendor-Owned Deliverables").

6.2. License to Vendor-Owned Deliverables

Except as otherwise provided in and subject to this Agreement or another agreement between the parties, Vendor, Vendor Contractors, and Vendor Personnel hereby grants to DOE and Authorized Contractors of any of the foregoing a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license to use, reproduce, modify, distribute copies of, perform, display, host, and prepare derivative works based upon Vendor-Owned Deliverables provided hereunder. The foregoing grant shall be in addition to (and shall not be construed to limit) any rights, licenses, and privileges as may be granted in any license agreement(s) applicable to Vendor-Owned Deliverables. Vendor agrees that neither Vendor nor Vendor Contractors, Vendor Personnel, or any other Third Party shall charge or attempt to charge DOE any royalty, license fee, or similar charge for any Vendor-Owned Deliverable.

6.3. Ownership and Assignment of Customer-Owned Deliverables

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

6.4. Waiver

To the extent any of Vendor's, Vendor Contractor's, or any Vendor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge DOE's rights in and to Customer-Owned Deliverables.

6.5. Acknowledgement

Vendor acknowledges and agrees that DOE, as owner and assignee of Customer-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation:

- 6.5.1.** Obtain, secure, file and apply for any legal protection necessary to secure or protect any rights in and to Customer-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto;
- 6.5.2.** Adapt, change, modify, edit, or otherwise use Customer-Owned Deliverables as DOE sees fit, including in combination with the works of others, prepare derivative works based on Customer-Owned Deliverables, and publish, display, perform, host, and distribute throughout the world any Customer-Owned Deliverable(s) in any medium, whether now known or later devised, including any digital or optical medium; and
- 6.5.3.** Make, use, sell, license, sublicense, lease, or distribute Customer-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party, including Vendor Contractors or Vendor Personnel.

6.6. Further Assurances

At DOE's or State's request, Vendor will (both during and after the termination or expiration of this Agreement) execute and deliver such instruments, provide all facts known to it, and take such other action as may be requested by DOE or State to:

- 6.6.1.** Establish, perfect, or protect DOE's or State's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 6.3 (Ownership and Assignment of Customer-Owned Deliverables), and
- 6.6.2.** Obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof.

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

6.7. Third Party Intellectual Property

Except as otherwise provided herein or otherwise agreed to by the Parties in writing, in the event a Deliverable(s) is intellectual property owned by a Third Party ("Third Party Intellectual Property"), Vendor shall secure on behalf of and in the name of DOE, an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the Third Party Intellectual

Property, and to authorize others to do the same on DOE's behalf, including its Authorized Contractors. In the event that a Deliverable(s) created by Vendor under this Agreement is a derivative work based upon Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Vendor shall secure on behalf of and in the name of DOE an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the pre-existing elements of such Third Party Intellectual Property, and to authorize others to do the same on DOE's behalf.

6.8. Rights of the Federal and State Government

If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights, including a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Agreement and the copyright in and to such Deliverables.

6.9. Customer Property

Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement and in accordance with the terms and conditions of this Agreement and any Purchasing Instrument executed hereunder. Customer Property shall at all times remain the property of DOE.

6.10. Additional Rights

Except as otherwise provided herein (including as it relates to the System), with respect to any license granted to DOE pursuant to this Agreement, a Purchasing Instrument, or any other related agreement, such license shall be deemed to include the following additional grant of rights to DOE:

- 6.10.1.** Use, install, host, access, execute, copy, modify, edit, format, translate, maintain, support, repair, enhance, test, demonstrate, and display the Deliverables, and prepare derivative works based on the Deliverables, in all media now known or hereafter created, including the right to host or install the Deliverables on any one or more of the computers, data center locations, networks, Internet or intranet sites, servers or other systems of DOE or any of its Authorized Contractors ("Licensee Systems").
- 6.10.2.** Combine and use the Deliverables with other software, firmware, other code, including public code, and hardware;
- 6.10.3.** The same grant of right rights granted to DOE to its Authorized Contractors; and
- 6.10.4.** The right to permit access to and use of the Deliverables and its functions by end users.

The foregoing license grants and rights conferred herein include a license under any current or future patents owned or licensable by Vendor or an applicable Third Party, including Vendor Contractors or Vendor Personnel, to the extent necessary for DOE: (i) to exercise any license right granted herein; and (ii) to combine the Deliverables with any other Deliverables or any other hardware or Software. For purposes of this

Agreement, if DOE makes any modifications or Enhancements to the Deliverables, (whether directly or indirectly through an Authorized Contractor), DOE shall own such modifications or Enhancements.

7. Representations, Warranties, and Covenants

7.1. Deliverables Free of Deficiencies

Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Acceptance Criteria and in accordance with this Agreement during the Warranty Period. During the Term or the Warranty Period, whichever is longer, Vendor shall, at its expense, repair, correct, or replace any Deliverable(s) that contains or experiences material Deficiencies or fails to meet, conform to, or operate in accordance with Acceptance Criteria within ten (10) days of receiving notice of such Deficiencies or failures from DOE. In the event Vendor is unable to repair, correct, or replace such Deliverable(s) to DOE's satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverable(s). The foregoing shall not constitute an exclusive remedy under this Agreement, and DOE or any other Governmental Entity shall be entitled to pursue any other available contractual, legal, or equitable remedies. Vendor shall be available at all reasonable times to assist DOE with questions, problems, and concerns about the Deliverable(s), to inform DOE promptly of any known Deficiencies in any Deliverable(s), repair and correct any Deliverable(s) not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable(s) may have been accepted by DOE, and provide DOE with all necessary materials and any related Services with respect to such repaired or corrected Deliverable(s). Acceptance Testing will not in any way relieve Vendor of its responsibilities to correct any Deficiency.

7.2. Fitness for Intended Purpose

Vendor represents and warrants that it is fully aware of DOE's business requirements and intended purposes and uses for the Deliverables, and the Deliverables shall satisfy such requirements, including all Acceptance Criteria, in all material respects and are fit for such intended purposes and uses.

7.3. Quiet Enjoyment

Vendor represents and warrants that: (i) all Deliverables shall be wholly original with and prepared solely by Vendor; (ii) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide Deliverables to DOE and other Governmental Entities hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed DOE hereunder without violating any rights of any Third Party; (iii) 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 DOE herein; and (iv) DOE shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption or interruption.

7.4. Intellectual Property

Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) DOE's and other Governmental Entities' use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right,

proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform DOE in writing immediately upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, Vendor shall, at DOE's request and at Vendor's sole expense: (i) procure for DOE the right or license to continue to use the Deliverable(s) at issue; (ii) replace such Deliverable(s) with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation, or misappropriation; (iii) modify or replace the affected portion of the Deliverable(s) with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable(s) at issue and refund to DOE all fees, charges and any other amounts paid by DOE under this Agreement or any related agreement with respect to such Deliverable(s). In addition, Vendor agrees to indemnify and hold harmless DOE and its officers, directors, employees, officials, and agents as provided in the Indemnification section of this Agreement, including for any breach of the representations and warranties made by Vendor in this Section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to DOE under this Agreement or otherwise and shall survive termination of this Agreement.

7.5. Workmanlike Manner

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

7.6. Compliance with Law

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

- 7.6.1.** Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State's written request, Vendor shall submit to the State a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
- 7.6.2.** Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.

- 7.6.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 7.6.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 7.6.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.0, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
- 7.6.6. All applicable I.T. Governance Document(s).
- 7.6.7. To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, any terms or conditions applicable to Vendor as provided to Vendor by DOE.

Vendor shall take such steps as necessary to ensure Vendor Contractors and Vendor Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Agreement to the contrary, Vendor, Vendor Contractors, and Vendor Personnel's failure to fulfill any requirement set forth in this Section shall be regarded as a material breach of this Agreement DOE may cancel, terminate, or suspend, in whole or in part, this Agreement. In addition, DOE or its designee may declare Vendor ineligible for future State contracts in accordance with authorized procedures or Vendor may be subject to other sanctions as provided by law or rule.

7.7. No Conflicts

Vendor represents, warrants, and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

7.8. Up to Date on Payments

Vendor represents and warrants it is not in arrears with respect to the payment of any monies due and owing DOE within the State of Iowa, including the payment of taxes and employee benefits, and covenants and warrants it will not become so during the Term, or any extensions thereof.

7.9. Documentation

Vendor represents, warrants and covenants that during the Term, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains, and the Documentation will enable DOE to use and maintain such Deliverable(s) for their intended purposes.

7.10. Preservation of Implied Warranties

All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the Deliverables to be provided, or by provision of samples to DOE, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended

to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by Vendor.

7.11. Cumulative Warranties

Except to the extent otherwise provided herein, Vendor's warranties provided in this Section are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to DOE.

8. Indemnification

8.1. Generally

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

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

8.1.7. Any claim for wages, benefits, compensation, insurance, discrimination, or other similar claims asserted against any Governmental Entity making purchases hereunder or otherwise making use of the System or otherwise receiving Deliverables in connection with this Agreement by any Vendor Personnel, or any claim, penalties, or fines made, levied, assessed, or imposed by another Governmental Entity or any Vendor Personnel against a Governmental Entity making purchases hereunder or making use of the System or otherwise receiving Deliverables in connection with this Agreement in any way related to or involving the misclassification of employees as independent contractors or any allegations or findings of the existence of a joint-employment relationship involving any Vendor Personnel;

8.1.8. Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of any Third Party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) (“Indemnified Items”) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party (collectively “Claim(s)”).

8.2. Infringement Claim Additional Remedy

If the Indemnified Items, or any portion of them, become or are likely to become the subject of a Claim as provided in Section 8.1.8, then, in addition to paying any damages and attorney fees as required above, Vendor shall, at its option, either:

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

8.2.2. Immediately procure for DOE 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 Claim, in addition to any other remedies available to DOE under this Agreement, at law, or in equity, DOE shall have the right, at its sole option, to terminate this Agreement and have Vendor refund to DOE all associated fees, compensation or other amounts paid by DOE.

8.3. Vendor’s obligations under this Section are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.

8.4. Vendor’s duties as set forth in this Section shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor’s, Vendor Contractor’s, or Vendor Personnel’s performance of this Agreement regardless of the date any potential claim is made or discovered by DOE or any other Indemnitee.

9. Default and Termination

9.1. Termination for Cause by DOE

DOE may terminate this Agreement or applicable Purchasing Instrument upon written notice of Vendor’s breach of any material term, condition or provision of this Agreement or the applicable Purchasing Instrument, if such breach is not cured within the time period specified in DOE’s notice of breach or any subsequent notice or correspondence delivered by DOE to Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not

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

- 9.1.1.** Vendor, directly or indirectly, furnished any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete;
- 9.1.2.** Vendor or Vendor Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 9.1.3.** Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;
- 9.1.4.** Vendor terminates or suspends its business;
- 9.1.5.** Vendor's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;
- 9.1.6.** Vendor or Vendor Personnel has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations, standards, or orders when performing within the scope of this Agreement;
- 9.1.7.** DOE determines or believes Vendor has engaged in conduct that has or may expose DOE, the State, or another Governmental Entity making purchases hereunder or using the System or other Deliverables to material liability;
- 9.1.8.** Vendor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret;
- 9.1.9.** Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder, or entity having or owning a controlling interest in Vendor:
 - 9.1.9.1.** Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - 9.1.9.2.** Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

9.1.9.3. Making an assignment for the benefit of creditors;

9.1.9.4. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or

9.1.9.5. Taking any action to authorize any of the foregoing.

The right to terminate this Agreement pursuant to this Section shall be in addition to and not exclusive of other remedies available DOE, DOE shall be entitled to exercise any other rights and pursue any remedies available under this Agreement, in law, at equity, or otherwise. Vendor shall notify DOE in writing if any of the foregoing events occur that would authorize DOE to immediately terminate this Agreement or a Purchasing Instrument.

9.2. Termination for Cause by Vendor

Vendor may only terminate an applicable Purchasing Instrument upon written notice of the breach by DOE of any material term, condition, or provision of this Agreement related thereto, if such breach is not cured within sixty (60) days of DOE's receipt of Vendor's written notice of breach.

9.3. Termination for Convenience

Following thirty (30) days written notice, DOE may terminate this Agreement or a Purchasing Instrument in whole or in part for convenience without the payment of any penalty or incurring any further obligation or liability to Vendor. Termination for convenience can be for any reason or no reason at all.

9.4. Termination Due to Lack of Funds or Change in Law

Notwithstanding anything in this Agreement to the contrary, DOE shall, upon written notice, have the right to terminate this Agreement DOE shall, upon written notice, have the right to terminate a Purchasing Instrument without penalty or liability and without any advance notice as a result of any of the following:

9.4.1. The legislature, governor, or other applicable governing body fail in the sole DOE to appropriate funds sufficient to allow DOE to either meet its obligations under this Agreement or the applicable Purchasing Instrument or to operate as required and to fulfill its obligations under this Agreement or the applicable Purchasing Instrument; or

9.4.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed DOE to make any payment hereunder are insufficient or unavailable for any other reason as determined by DOE in its sole discretion; or

9.4.3. If DOE'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; or

9.4.4. If DOE's duties, programs, or responsibilities are modified or materially altered; or

9.4.5. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects DOE's ability to fulfill any of its obligations under this Agreement or the applicable Purchasing Instrument.

9.5. Limitation of Payment Obligations

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

9.5.1. The payment of unemployment compensation to Vendor Personnel;

9.5.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

9.5.3. Any costs incurred by Vendor in its performance of the Agreement, including startup costs, overhead or other costs associated with the performance of the Agreement;

9.5.4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;

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

9.6. Vendor's Termination or Expiration Duties

Upon receipt of notice of termination, upon expiration, or upon request of DOE, Vendor shall:

9.6.1. Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as DOE may require;

9.6.2. Immediately cease using and return to DOE any property (including Customer Property) or materials, whether tangible or intangible, provided by DOE, directly or indirectly, to Vendor or prepared or developed by Vendor for the DOE hereunder;

- 9.6.3.** Immediately return to DOE any payments made by DOE for Deliverables that were not rendered or provided by Vendor;
- 9.6.4.** Immediately deliver to DOE any and all Deliverables, including Customer-Owned Deliverables, Software, and Documentation, for which DOE or any other Governmental Entity has a property interest and has made payment (in whole or in part) that is in the possession of or under the control of Vendor, Vendor Contractors, or Vendor Personnel in whatever stage of development or form at the time of such termination.
- 9.6.5.** Cooperate, in good faith, with DOE and continue to perform and provide such Deliverables under this Agreement as DOE may reasonably request for as it relates to the transition of Deliverables from Vendor to DOE or any Authorized Contractor hired or utilized by DOE to provide any replacement or similar Deliverables. During the Transition Period, and solely to the extent there are legally available funds to do so, DOE agrees to pay Vendor any fees to which Vendor would be entitled under this Agreement for Deliverables performed or provided during such period; provided this Agreement was not terminated pursuant to Section 9.1 and Vendor continues to be in full compliance with all terms and conditions of this Agreement. In the event DOE's request for transition assistance does not require Vendor to continue providing all of the Deliverables under this Agreement or a particular Purchasing Instrument, the Parties shall negotiate in good faith an equitable adjustment in the fees which are otherwise payable to Vendor for such Deliverables.

9.7. Survival

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

- 9.7.1.** The Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections:
 - 9.7.1.1.** 4 (Compensation and Additional Rights and Remedies);
 - 9.7.1.2.** 6 (Ownership and Intellectual Property);
 - 9.7.1.3.** 7 (Representations, Warranties, and Covenants);
 - 9.7.1.4.** 8 (Indemnification);
 - 9.7.1.5.** 9 (Term and Termination);
 - 9.7.1.6.** 10 (Confidentiality);
 - 9.7.1.7.** 11 (Security/Privacy, Business Continuity, and Disaster Recovery); and
 - 9.7.1.8.** 12 (Contract Administration).
- 9.7.2.** Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

10. Confidentiality

10.1. Vendor's Treatment of Confidential Information

10.1.1. Limited Access

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

10.1.2. Destruction or Return of Customer Data

On DOE's written request or upon expiration or termination of this Agreement or applicable Purchasing Instrument for any reason, Vendor will promptly:

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

10.1.2.2. Provide a notarized written statement to DOE certifying all Customer Data has been returned or destroyed to the Governmental Entity, whichever is applicable.

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

10.1.3. Compelled Disclosures

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

10.1.3.1. As soon as becoming aware of such law, order, or requirement, and no-less-than five (5) business days prior to disclosing Customer Data pursuant thereto, Vendor will notify DOE in writing, specifying the nature of and

circumstances surrounding the contemplated disclosure, and forward any applicable process, including a subpoena, to DOE for its review.

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

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

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

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

10.1.4. To the extent Vendor comes into contact with any Customer Data of or belonging to any Governmental Entity other than DOE, the protections identified in this section shall also apply to such Customer Data.

10.2. Treatment of Vendor's Confidential Information

10.2.1. Safeguarding Obligation

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

10.2.2. Destruction or Return of Vendor's Confidential Information

On termination or expiration of this Agreement or the applicable Purchasing Instrument, DOE shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items subject to any continuing licenses inuring to the benefit of DOE hereunder or that are required for use of any Deliverables).

10.2.3. Compelled Disclosures

Notwithstanding and in addition to the foregoing, Governmental Entities may disclose Vendor's Confidential Information:

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

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

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

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

Prior to disclosing any of Vendor's Confidential Information as permitted above, DOE shall provide reasonable notice to Vendor of the circumstances giving rise to such disclosure. In addition, Vendor agrees to indemnify and hold harmless DOE and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever (including the reasonable value of time of the Attorney General's Office and/or the costs, expenses and attorney fees of other counsel retained by or on behalf of any Governmental Entity) arising out of, resulting from, or in any way related to any judgments or damages awarded against any Governmental Entity in favor of the party requesting any of Vendor's Confidential Information.

10.3. Open Records and Electronic Discovery Requests and Records Retention

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

10.4. Non-Exclusive Equitable Remedy

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

10.5. Survives Termination

Vendor's duties as set forth in this Section shall survive termination of this Agreement and

shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim is made or discovered by DOE or its Authorized Contractors.

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

11.1. Data Protection

In addition to any other terms or conditions herein, in connection with the hosting Services provided hereunder, Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:

- 11.1.1.** Implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, theft, or modification of Customer Property. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53 Revision 4 and ISO27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard their own Confidential Information of like importance. In addition, such security measures, to the extent applicable, shall comply with, and shall enable DOE and other Governmental Entities making use of the System or other Deliverables to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, policies, or procedures ordinances, codes, regulations, and orders related to such security measures or other security, privacy, or safeguarding requirements, including applicable I.T. Governance Document(s) that have been supplied to Vendor or Vendor Contractors by DOE.
- 11.1.2.** All Customer Data 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, Vendor Contractors, and Vendor Personnel are responsible for encryption of Customer Data in their possession. Additionally, Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless DOE approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.
- 11.1.3.** Storage, processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America. Vendor shall not allow Vendor Personnel to store, process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.
- 11.1.4.** Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support. Vendor may not provide technical user support on a 24/7 basis using a Follow the Sun model.

11.2. Additional Hosting Terms

In addition to other terms herein (including Section 10 and all of this Section 11) that would be applicable to hosting, infrastructure, other "as a service" delivery models, or other similar Services, the following shall apply to the hosting aspect of the Services provided hereunder:

11.2.1. Import and Export of Data

To the extent Customer Data is stored, retained, or otherwise maintained in electronic format in connection with any hosting, infrastructure, or other similar Services, DOE or its Authorized Contractors shall have the ability to import or export data or information, including Customer Data, in whole or in part to or from such services, at no charge, and in such formats as may be acceptable to DOE, without interference from Vendor. In the event DOE is unable to successfully import or export data and information in whole or in part, Vendor shall assist DOE in doing so at no charge. As it relates to the export of such data and information, Vendor shall provide to or ensure DOE has obtained an export of any requested data or information within one (1) day of any request in the format specified by DOE.

11.2.2. Retention of Customer Data

Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor shall not take any action to intentionally erase any Customer Data until otherwise directed by DOE in accordance with Section 10.1.2.

11.2.3. Compliance/Audits

11.2.3.1. Compliance

Annually throughout the term, Vendor shall obtain and provide DOE upon request, at no additional cost:

11.2.3.1.1. An independent, Third-Party certificate of audit certifying that the Services/System complies with NIST 800-53, Revision 4 controls;

11.2.3.1.2. An ISO/IEC 27001:2005 certification;

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

11.2.3.1.4. Test results of a penetration test conducted by an independent, Third-Party;

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

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

11.2.4. Ongoing Security Testing

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 DOE. In addition, Vendor shall disclose its non-proprietary security processes and technical limitations to DOE to enable DOE to identify compensating controls necessary to adequately safeguard and protect Customer Data. For example, Vendor shall disclose its security processes with respect to virus checking and port sniffing to DOE.

11.2.5. Security Audit by OCIO

During the Term, DOE or its Authorized Contractor(s) may perform security audits/scans of Vendor's environment, including unannounced penetration and security tests. DOE's regulators (and any federal agencies providing grant funds used to pay for such Deliverables, 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.

11.2.6. Access to Security Logs and Reports

Vendor shall provide security logs and reports DOE or its Authorized Contractors in a mutually agreeable format upon request. Such reports shall include at least latency statistics, user access summaries, user access IP address summaries, user access history and security logs for all State files related to the underlying agreement.

11.2.7. Backup and Recovery

In addition to any other requirements related to backup and recovery set forth in a Service Level Agreement or Purchasing Instrument, Vendor is responsible for maintaining a backup of both the System itself (including all then-current Source Code) and Customer Data on a nightly basis. Vendor shall store such backup(s) in an off-site "hardened" facility, maintaining the security of the System itself (including all then-current Source Code) and Customer Data, and consistent with the security requirements set forth in this Section. To the extent applicable, any backups of Customer Data shall not be considered in calculating storage used by DOE.

11.3. Personnel Safeguards

11.3.1. Background Checks

11.3.1.1. Floor

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

11.3.1.2. Additional Screening

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

11.3.1.3. Vendor shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor or DOE or its Authorized Contractor.

11.3.2. Right to Remove Individuals

Should DOE be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel, DOE may request the replacement of such Vendor Personnel (“Replacement Request”). The Replacement Request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. If DOE, in its sole discretion, determines Vendor Personnel pose a potential security risk and notifies Vendor of such security risk in its Replacement Request, Vendor shall immediately remove such individual; any replacement furnished by Vendor in connection with such a request may not perform or provide Deliverables to DOE unless and until DOE gives its consent to Vendor’s use of such replacement. Vendor shall notify DOE immediately upon receiving a Replacement Request from another Governmental Entity and promptly provide a copy of such Replacement Request to DOE.

11.3.3. Security Awareness Training

Vendor shall promote and maintain an awareness of the importance of securing Customer Property, including Customer Data, among Vendor Personnel.

11.3.4. Separation of Job Duties

Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Contractors and Vendor Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Property to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Deliverables hereunder.

11.3.5. Non-disclosure/Confidentiality Agreements

Vendor Personnel may be required to sign a Governmental Entity’s standard confidentiality or non-disclosure agreement(s), or other confidentiality or non-disclosure agreement(s) as may be required by applicable law, rule, regulation, or policy.

11.4. Security Breaches

11.4.1. Reporting

Vendor or Vendor Contractors will report to DOE within two (2) hours of Vendor’s or Vendor Contractor’s discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to DOE within forty-eight (48) hours of discovery or notification of the actual or suspected Security Breach. Such written confirmation shall include an explanation of the nature of and circumstances surrounding such actual or suspected Security Breach.

11.4.2. Investigations in Response to Actual or Suspected Breach

Vendor and Vendor Contractors agree, at their sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with DOE and other applicable Governmental Entities in resolving and mitigating any damage from such actual or suspected Security Breach at Vendor’s sole cost. At no additional cost to DOE, the State of Iowa, or other applicable Governmental Entities, Vendor and Vendor Contractor will fully cooperate with DOE and its Authorized Contractors of any of the foregoing in investigating such actual or suspected Security Breach, including reviewing and assisting in reviewing

system, application, and access logs, conducting and assisting in conducting forensic audits of relevant systems, imaging and assisting in imaging relevant media, and making personnel available for interview. On notice of any actual or suspected Security Breach, Vendor and Vendor Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. Vendor and Vendor Contractor will deliver to DOE a root cause assessment and future incident mitigation plan, and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. Vendor agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless DOE specifically requests Vendor do so in writing.

11.4.3. Additional Remedies in the Event of Actual Breach

Upon DOE's determination that a Security Breach involving or relating to Customer Data has occurred, Vendor and Vendor Contractors shall fully cooperate with DOE and other applicable Governmental Entities in fully rectifying/responding to such Security Breach, including notifying all of DOE's and other applicable Governmental Entities' affected users. DOE shall determine, in its sole discretion, the content and means of delivery of any such notifications. Notwithstanding any provision in this Agreement or any other related agreement to the contrary, Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (including the reasonable value of time of the Iowa Attorney General's Office and/or the costs, expenses and attorney fees of other counsel retained by or on behalf of any Governmental Entities) related to, arising out of, or incurred by or on behalf of DOE or any other applicable Governmental Entity as a result of, any Security Breach caused directly or indirectly, in whole or in part, by Vendor Personnel, including the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); opening and closing accounts, printing new checks, embossing new cards; forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all other costs associated with corrective or other actions that are taken to mitigate or address the Security Breach. Vendor will reimburse or pay to DOE or any other adversely affected Governmental Entity all such expenses, fees, damages, and all other amounts within fifteen (15) business days of the date of any written demand or request delivered to Vendor.

12. General Provisions

12.1. Ancillary Agreements and Non-Disclosure Agreements

Vendor or Vendor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to an DOE making purchases hereunder including non-disclosure or confidentiality agreements in connection with this Agreement or any related agreement deemed necessary by DOE ("Ancillary Agreement(s)").

12.2. Immigration Status

Vendor and Vendor Contractors are responsible for ensuring Vendor Personnel possess and maintain valid Visas for any Vendor Personnel for whom a Visa is required. DOE may require

Vendor or Vendor Contractors to conduct E-Verify employment-eligibility verifications of Vendor Personnel performing or providing Deliverables hereunder. Vendor shall be responsible for all costs associated with the E-Verify process, and shall provide DOE with the results of this process in a mutually agreeable form and manner in advance of any engagement hereunder.

12.3. No Publicity

During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor, Vendor Contractors, and Vendor Personnel shall not make any media release or other public announcement relating to or referring to this Agreement or a Purchasing Instrument without DOE's prior written consent. Vendor, Vendor Contractors, and Vendor Personnel shall acquire no right to use, and shall not use, without DOE's written consent, the terms or existence of this Agreement or any Purchasing Instrument, 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 Deliverables by the State of Iowa or any Governmental Entity; or (c) in any manner other than expressly in accordance with this Agreement.

12.4. Right to Hire

Under the following circumstances, and notwithstanding any noncompete clause in any contract, subcontract, or other like agreement between Vendor or Vendor Contractors and Vendor Personnel, Vendor Personnel shall not be precluded from seeking employment with or accepting an offer of employment from: a) any Governmental Entities making purchasing hereunder or otherwise using the System or any related Deliverables; or b) OCIO.

12.5. Independent Contractor

Vendor is an independent contractor performing services for DOE.

12.5.1. Vendor, Vendor Contractors, and Vendor Personnel shall not hold itself out as an employee or agent of any Governmental Entities.

12.5.2. Except as otherwise provided herein or in a Purchasing Instrument, Vendor or Vendor Contractors shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Vendor Personnel to perform and provide Deliverables hereunder.

12.5.3. Vendor Personnel are not eligible for and Vendor shall ensure Vendor Personnel never claim they are eligible for or otherwise entitled to any State employee benefits, including retirement benefits, insurance coverage, or the like.

12.5.4. Vendor Personnel shall not be considered employees of any Governmental Entity for any purpose, including for federal or State tax purposes. Governmental Entities shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

- 12.5.5.** DOE shall have no right or authority to direct or control Vendor Personnel with respect to the performance or provisioning of Deliverables under this Agreement, or with respect to any other matter, except as otherwise provided by this Agreement or a Purchasing Instrument. DOE is interested only in the results to be achieved by Vendor under this Agreement; the manner and method of performing and providing all Deliverables under this Agreement shall be under the exclusive control of Vendor, in accordance with the terms of this Agreement.
- 12.5.6.** During any engagement under this Agreement, Vendor Personnel may perform work on behalf of, and provide Deliverables to, Third Parties, and may market and advertise their services to Third Parties, so long as such activities do not: (a) violate any terms or conditions of this Agreement; (b) adversely affect the performance or provisioning of Deliverables hereunder or satisfaction of any other duties, responsibilities, or obligations set forth herein; (c) create an actual or potential conflict of interest; (d) violate any intellectual property rights or interests of DOE or any Governmental Entity.
- 12.5.7.** Vendor and Vendor Contractors shall be free to hire employees as is necessary for their business purposes; provided, that such employees providing or provisioning Deliverables hereunder shall satisfy the terms and conditions of this Agreement and any Purchasing Instrument(s) executed hereunder. The Parties acknowledge and agree that DOE will not have the authority to hire, fire, supervise, control, or manage any Vendor Personnel.
- 12.5.8.** Vendor Personnel shall not receive performance reviews, vocational training, or business cards from DOE or any Governmental Entity; shall clearly state in any and all communications related to the performance or provisioning of Deliverables hereunder that they are employees of Vendor or Vendor Contractor, and not employees of DOE; and shall not be subject to the DOE's standard disciplinary practices and procedures.

12.6. Amendments

This Agreement may be amended, modified, or replaced from time to time by mutual consent of DOE and Vendor. Both Parties must execute all amendments to this Agreement in writing.

12.7. No Third Party Beneficiaries

There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit DOE and Vendor and their respective successors and permitted assigns.

12.8. Choice of Law and Forum

This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to

such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to any Governmental Entity, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's designated agent. Vendor appoints [REDACTED] as its agent to receive service of process. If for any reason Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide DOE with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by DOE. Nothing in this provision will alter the right of DOE to serve process in any other manner permitted by law. This Section shall survive termination of this Agreement.

12.9. Assignment and Delegation

This Agreement may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that DOE may assign, transfer, or convey this Agreement, in whole or in part, to any Governmental Entity that succeeds its duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by DOE. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide DOE with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of DOE. Vendor further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Vendor under this Agreement.

12.10. Use of Third Parties

None of the Deliverables to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party, including Vendor Contractors, without the prior written consent of DOE. DOE consents to Vendor's use of [REDACTED] as a hosting provider, subject to the terms and conditions of this Agreement. Such consent shall not be deemed in any way to provide for the incurrence of any additional obligation of DOE, whether financial or otherwise. Any subcontract to which DOE has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that DOE may deem necessary. Vendor is solely liable for any and all payments that may be due to Vendor Contractors pursuant to any subcontract. Vendor shall indemnify and hold harmless the DOE and any Governmental Entity and their officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever (including the reasonable value of time of the Attorney General's Office and the costs, expenses and/or attorney fees of other counsel retained by or on behalf of another Governmental Entity) arising out of, resulting from, or in any way related to Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any Vendor Contractor. In addition, DOE and any Governmental Entity is not responsible for any failure of any Vendor Contractors to pay any amounts that may be due Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in

connection with Deliverables performed or provided under this Agreement, DOE may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in such manner shall not relieve Vendor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow DOE or its designee to access the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Vendor Contractors. Any action of a Vendor Contractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect. The term "Vendor" as used in this Agreement shall, unless the context clearly requires to the contrary, be deemed to include Vendor Contractors and Vendor Personnel.

12.11. Integration

This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included in this Agreement. Thus, no Governmental Entity shall be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "browser-wrap" agreement, or "sneakwrap" agreement, or any other similar agreement that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related Special Terms and Conditions, Ancillary Agreements, schedules, exhibits, and other like documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept the same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against DOE on the basis of draftsmanship or preparation thereof.

12.12. Supersedes Former Agreements/Transition of Purchasing Instruments

This Agreement supersedes all prior Agreements between DOE and Vendor for the Deliverables provided in connection with this Agreement.

12.13. Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of DOE and Vendor, failure by DOE or Vendor at any time to require performance by the other Party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the Parties hereto.

12.14. Notices

Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice (identified below) at the address of the Party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the State:[4]

If to Vendor:

12.15. Cumulative Rights

The various rights, powers, options, elections, and remedies of DOE, the State, and Governmental Entities provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed by law, and shall in no way affect or impair the right of DOE, the State, or any Governmental Entities to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by DOE, the State, or any Governmental Entity of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.16. Severability

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

12.17. Time is of the Essence

Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all Vendor Contractors and Vendor Personnel providing Deliverables hereunder are responsive to DOE's requirements and requests in all respects.

12.18. Authorization

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

12.19. Successors in Interest

All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, and legal representatives.

12.20. Records Retention and Access

Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the Term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require Vendor Contractors to agree to the same provisions of this section.

12.21. Headings or Captions and Terms

The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

12.22. Multiple Counterparts

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

12.23. Not a Joint Venture

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

12.24. Attachments

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

12.25. Further Assurances and Corrective Instruments

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

12.26. Obligations of Joint Entities

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

12.27. Force Majeure

Neither Party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a “force majeure.” The term “force majeure” as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties. “Force majeure” does not include: financial difficulties of Vendor or Vendor Contractors; claims or court orders that restrict Vendor’s or Vendor Contractor’s ability to perform or deliver the Deliverables contemplated by this Agreement; strikes; labor unrest; or supply chain disruptions. If delay results from a Vendor Contractor’s conduct, negligence or failure to perform, Vendor shall not be excused from compliance with the terms and obligations of Vendor unless the Vendor Contractor is prevented from timely performance by a “force majeure” as defined in this Agreement. If a “force majeure” delays or prevents Vendor’s performance, Vendor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by DOE. The Party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other Party of the occurrence and reason for the delay. The Parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which Vendor’s performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

12.28. Material Breaches

The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

12.29. Right of Inspection/Contract Compliance

Vendor shall allow DOE making purchases or its designee to inspect Vendors books and records at reasonable times in order to monitor and evaluate performance of this Agreement. All subcontracts shall contain provisions which allowing the same. In addition, Vendor agrees that DOE or its designee may conduct a complete contract compliance audit at least once annually during the Term of this Agreement and after termination or expiration of this Agreement to determine whether or not Vendor is complying with the terms of this Agreement and any related Purchasing Instruments. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested DOE or its designee. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

12.30. Taxes

Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. DOE and the State are exempt from the payment of State sales and other taxes:

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

12.31. Title to Property

Title to all property, including Customer Property, furnished by a Governmental Entity to Vendor to facilitate the performance of this Agreement shall remain the sole property of DOE or the applicable Governmental Entity. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to DOE or the applicable Governmental Entity upon the earliest of completion, termination, cancellation of this Agreement or the applicable Purchasing Instrument, or at DOE's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided for in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid DOE under this Agreement, shall pass to and vest in DOE, except as otherwise provided in this Agreement.

12.32. Exclusivity

This Agreement is not exclusive. DOE may obtain similar or identical Deliverables from other vendors.

12.33. Award of Related Agreements

DOE may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with Authorized Contractors who may be engaged by DOE in connection with this Agreement. Any reference herein to DOE's designee or other like reference shall be deemed to include its Authorized Contractors. Vendor will ensure that any Vendor Contractors or Vendor Personnel will abide by this provision.

12.34. Sovereign Immunity

No Governmental Entity waives sovereign immunity or any other immunity available to it by entering into this Agreement and specifically retains and reserves the defense of sovereign immunity and all defenses available under State and federal laws, rules, and regulations for any claim arising out of or related to this Agreement

12.35. Attorney's Fees and Expenses

In the event Vendor defaults on any of its obligations under this Agreement, Vendor shall pay to DOE all costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of DOE) incurred by DOE in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.36. Care of Property

Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property, including Customer Property, furnished by a Governmental Entity for

Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at DOE's request, restore damaged property to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by DOE. In addition, at DOE's request, Vendor will reimburse DOE for any loss or damage to such property caused by Vendor, Vendor Contractors, or Vendor Personnel. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of any Governmental Entity, including DOE. Vendor shall obtain the prior advance written approval from the Governmental Entity, including DOE, prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks, or intellectual property rights of the same.

12.37. Conflicts of Interest

Vendor represents, warrants, and covenants that no relationship exists or will exist during the Term of the Agreement between Vendor, Vendor Contractors, or Vendor Personnel and DOE or the State of Iowa that is or may constitute a conflict of interest or appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement and any Purchasing Instruments executed hereunder, and Vendor, Vendor Contractors, and Vendor Personnel shall not engage in any conduct or permit any Third Party from engaging in any conduct that would violate that chapter.

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

**Iowa Department of Education
("DOE" or "State")**

("Vendor")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**ATTACHMENT #7 SPECIAL TERMS AND CONDITIONS
SAMPLE PURCHASING INSTRUMENT/STATEMENT OF WORK**

The following Purchasing Instrument/Statement of Work (“SOW”) incorporates the terms and conditions of the Iowa Department of Education (“DOE”) MTSS Data System Agreement (“Agreement”), Contact No. _____, (“Agreement”) between the State of Iowa, acting by and through the Iowa Department of Education (“DOE” or “State”), and _____, a corporation organized under the laws of _____ (“Vendor”), dated _____, 2018. Capitalized terms not defined in this herein are as defined in the Agreement.

1. Executive Summary/Project Scope

- 1. Deliverables;
- 2. Implementation;

2. Specifications

- 1. Solution Components
- 2. Source Code

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

- 3. Services
- 4. Training and Knowledge Transfer
- 5. Support
- 6. Documentation

3. Delivery Timeframes/Period of Performance

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

The following table identifies milestone events and Deliverables, associated schedules/timelines, associated payments, any Retained Amounts, and applicable Performance Standards. All Deliverables as defined below shall be subject to the Acceptance Testing process set forth in the Agreement. Subject to any assumptions noted below, failure of Vendor to meet the deadlines/timelines listed in the “Schedule” column below shall result in Vendor being liable to the Governmental Entity for the amount specified in the “Performance Standards” column.

Milestone	Deliverable(s)	Schedule	Total Payment	Retained Amounts	Net Payment	Performance Standards
Project Kick-Off Meeting	--	Effective Date + 5 days	\$--	\$--	--	
Total						

5. DOE’s Responsibilities

6. Assumptions

7. Security

8. Dispute Resolution/Performance Monitoring

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

9. Contacts

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

Vendor Representative: _____
Address: _____

Telephone number: _____
Email address: _____

Representative of DOE: _____
Address: _____

Telephone number: _____
Email address: _____

**ATTACHMENT #8 SPECIAL TERMS AND CONDITIONS
SERVICE LEVELS (“SLA”)**

The following Special Terms and Conditions/Service Level Agreement is part of and incorporated into the Iowa Department of Education MTSS Data System Agreement, Contact No. _____, (“Agreement”) between the State of Iowa, acting by and through the Iowa Department of Education (“DOE” or “State”), and _____, a corporation organized under the laws of _____ (“Vendor”), dated _____, 2018. Capitalized terms not defined in this herein are as defined in the Agreement.

1. Overview

These Special Terms and Conditions describe the performance standards and service levels to be achieved by Vendor in providing the System to DOE and other Governmental Entities.

2. 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 System shall: (a) be capable of being utilized or accessed over the Internet by DOE, other Governmental Entities, and the Authorized Contractors and end users of either of the foregoing as contemplated under the Agreement, RFP, and Vendor’s Proposal, including conformance with any specifications in Documentation, without error, and without material degradation of performance; and (b) provide the functionality required under the Agreement and applicable Purchasing Instruments.

“Downtime” means the aggregate duration of Outages for the System during a calendar month, excluding Scheduled Downtime.

“Download Time” means the average time to download any page related to the System, 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.

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

“Outage” means any time during which the System (or any portion thereof) is not Available within calendar month, measured from the earliest point in time that such Outage is or reasonably should be detected by Vendor, or Vendor Contractor, but in any event no later than the time the Outage actually occurred. An Outage is an Error.

“Scheduled Downtime” means scheduled maintenance Outages communicated to DOE at least twenty-four (24) hours in advance, which Outages shall last no longer than is reasonably necessary to address the applicable maintenance need. Maintenance is normally scheduled from 9 PM – 6 AM Central.

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

“**Support Request(s)**” mean a request by DOE or other Governmental Entity to Vendor related to the Application Services being un-Available.

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

Level 1 Critical: Any Error or problem causing the System to be un-Available in a manner that affects a majority of end users.

Level 2 Major: Any Error or problem causing the System to be un-Available or any part of the system largely not functional in a manner that affects a substantial number of end users.

Level 3 Minor: Any Error or problem related to the functionality of the Application Services which does not cause the System to become materially un-Available to end users. For example, when a minor defect is reported.

Level 4 Informational: Any Error or problem not covered in levels 1–3, above. For example, a question about how to use a certain function related to the System.

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

3. Service Levels

3.1. Support Requests

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

3.1.1. Support response times

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

Title	Performance Level		Measurement Period
<p>Support Response Times* * Response times reflect responses within Normal Business Hours. If a ticket is submitted before or after Normal Business Hours, the performance level requirement will begin at the next Normal Business Hour.</p>	Level 1	15 minutes	From initial request
	Level 2	1 hours	
	Level 3	4 hours	

	Level 4	8 hours	
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3.1.2. Support Status Update

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

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

3.2. Uptime/Availability

3.2.1. The System will be Available:

3.2.1.1. 99% during Critical Hours, excluding Scheduled Downtime; and

3.2.1.2. 95% during Non-Critical Hours, excluding Scheduled Downtime.

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

3.3. Download Times

Vendor represents, warrants, and covenants that the Download time for a page of or related to the System shall be:

Title	Performance Level		Measurement Period
Download Times	During Critical Hours	At a maximum, the lesser of (a) 0.5 seconds above the KB40, or (b) ten (10) seconds	Each operative input from the user, whether by keyboard, mouse click, or any other input device.

	During non-Critical Hours	At a maximum, the lesser of (a) 0.8 seconds above the KB40, or (b) fifteen (15) seconds	
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3.3.1. Vendor shall be responsible all Download Times in accordance with the service levels identified above, including if such Downtime was caused, in whole or in part, by Vendor Contractor or Vendor Personnel.

3.3.2. Vendor shall be responsible all Download Times in accordance with the service levels identified above, based on the assumption that DOE or other Governmental Entities or their Authorized Contractors or users may have relatively slow internet connection speeds, including as low as twenty (20) megabits per second of download speed.

3.3.3. Tests of Download Times shall be conducted by Vendor over any two (2) hour period during Critical Hours every ten (10) business day(s) using a representative number of logged-on computers or terminals for the selected two (2) hour period, and running a representative sampling of applications then installed.

4. Reporting/Audits

4.1. Reporting

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

4.2. Audits

DOE or its designee will have the right to audit Vendor’s measurement, monitoring, and reporting on all Service Levels herein, including providing DOE 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.

5. Remedies

5.1. Service Level Failures

Failure to achieve any of the service levels described in Section 3 (Service Levels) shall constitute a “Service Level Failure” and Vendor shall be liable for the Service Level Credits in the amounts set forth in the table below.

5.2. Service Level Credits

Upon the occurrence of any Service Level Failure, Vendor shall issue to DOE a credit in the amount set forth in the table below (“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 DOE. Vendor shall notify DOE in writing if DOE becomes entitled to a

Service Level Credit, which notice shall be included in the monthly performance reports as described in Section 4 (Reporting/Audits). The total amount of Service Level Credits Vendor will be obligated to pay to the DOE, 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. In the event DOE prepays for any Services more than one month in advance, Vendor will issue refunds or credits to DOE at DOE's sole discretion, within ninety (90) days of the end of the month in which the Service Level Failure occurred.

5.3. Termination for Chronic Service Level Failures

In addition to its termination rights under the Agreement, DOE 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.

5.4. Service Level Credits:

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

**ATTACHMENT #9 SPECIAL TERMS AND CONDITIONS
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 attachment. Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor's performance of the Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Exhibit shall: (a) remain in full force and effect for the entire Term of the Agreement; and (b) not be reduced, changed (to the detriment of the State of Iowa or any Governmental Entities), or canceled (without being simultaneously replaced by another policy meeting the requirements of this Exhibit). The State of Iowa shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: "It is hereby agreed and understood that the State of Iowa is named as additional insured, and that the coverage afforded to the State of Iowa under this policy shall be primary insurance. If the State of Iowa has other insurance that is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance." Notwithstanding the foregoing, the requirement that the State of Iowa be named as additional insureds on all policies of insurance shall not apply to Vendor's Workers Compensation Insurance. The State of Iowa will accept a combined Technology Errors and Omissions and Cyber Liability policy or a separate Technology errors and Omissions and separate Cyber Liability policy. Such insurance shall, (a) cover the liability of Vendor by reason of any actual or alleged error, omission, negligent act or wrongful act of Vendor committed in rendering or failing to render any products or services, and shall specifically include coverage for liabilities caused by a security breach, breach of privacy, or a breach of privacy regulations, including unauthorized disclosure of information, unauthorized access, or failure to protect a network security breach; liabilities resulting from the unauthorized release, transmission or publication of private or technical information in your possession under the scope of the Agreement; (b) including the indemnification of the State of Iowa for any costs and expenses, including the State of Iowa's notification expenses, incurred by the State of Iowa arising out of a security breach, privacy breach, or breach of privacy regulations; with an occurrence or per claim limit and annual aggregate limit of not less than \$15,000,000 each claim/\$15,000,000 annual aggregate; and (c) if underwritten on a claims made insuring agreement, be maintained for a period of not less than two (2) years after the expiration of the Agreement. In the event Vendor fails to secure and continuously maintain the insurance coverage required under this attachment, the State of Iowa may charge Vendor, and Vendor shall pay the State of Iowa, (a) the State of Iowa's actual expenses incurred in purchasing similar protection and (b) the value or amount of any claims, actions, damages, liabilities, costs, and expenses paid by the State of Iowa which would not have been paid by the State of Iowa if Vendor had complied with the requirements of this Exhibit.

2. Insurance Policies

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

<u>Type of Insurance</u>	<u>Limit</u>	<u>Amount</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$5 million
	Products –	
	Comp/Op Aggregate	\$5 million
	Personal injury	\$1 million
	Each Occurrence	\$1 million
Excess Liability, umbrella form	Each Occurrence	\$2 million
	Aggregate	\$5 million
Technology Errors and Omissions Insurance	Each Occurrence	\$5 million
	Aggregate	\$5 million
Workers Compensation and Employer Liability	As Required by Iowa law	\$1 million
Cyber Liability / Network Security	Each Occurrence	\$5 million
	Aggregate	\$5 million

3. Claims Provision

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

4. Certificates of Coverage

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

5. Liability of Vendor

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

6. Waiver of Subrogation Rights

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

7. Filing of Claims

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

8. Proceeds

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

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

Iowa Department of Education
("DOE" or "State")

("Vendor")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

