

**Iowa Department of Education
Contracts Declaration & Execution (“CD&E”)**

Title of Contract: [Title] (“Agreement”) pursuant to and incorporating by reference Request for Proposal #1218282014, entitled ESL Online Instructional Platform (“RFP”), available at [redacted], and Vendor’s responsive Proposal thereto dated [redacted] (“Proposal”).	Contract Number:	
State Agency’s Name: Iowa Department of Education (“DOE” or “State”)		
Vendor’s Name: [redacted] (“Vendor”).		
Contract to Begin/Effective Date: Start Date	Date of Expiration: End Date	Annual Extensions: Up to Five (5) Annual One Year Renewals.
<p><u>Documents Incorporated/Order of Precedence.</u> This Agreement, any and all attachments to this Agreement which are incorporated by reference as if fully set forth herein, and the RFP and Proposal which are incorporated by reference as if fully set forth herein, together comprise the terms and conditions governing the relationship between the Parties (“Agreement”). In the case of any conflict or inconsistency between the specific provisions of this Agreement, any and all attachments to this Agreement, or the RFP and the Proposal, such conflict or inconsistency shall be resolved in the following order:</p> <ol style="list-style-type: none"> 1. First by giving preference to any Special Terms and Conditions/Ancillary Agreements and Amendments; 2. Second by giving preference to the specific provisions of this Agreement; 3. Third by giving preference to specific provisions of the RFP; 4. Fourth by giving preference to the Proposal; 5. Fifth by giving preference to the specific provisions of any Purchasing Instruments (Purchase Order(s)/Statement(s) of Work/Requisitions) executed hereunder; 6. Sixth by giving preference to any other Special Terms and Conditions attached hereto. 		
<u>Notes:</u>		

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

Vendor:

By (*Authorized Signature*)

Date Signed

Printed Name and Title of Person Signing

Address

State of Iowa, acting by and through the Iowa Department of Education

By (*Authorized Signature*)

Date Signed

Printed Name and Title of Person Signing
[Signatory], Iowa Department of Education

Address

Iowa Department of Education [Title of Agreement]

This Agreement for Managed Security Services is made and is effective as of the date identified on the Contract Declarations and Executions Page (“**Effective Date**”), by and between the State of Iowa, acting by and through the Iowa Department of Education (“**DOE**” or “**State**”), and [REDACTED], a corporation organized under the laws of [REDACTED] (“**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 Managed Security Services, as contemplated by the RFP and in accordance with the Proposal.
- 1.2. **Term.** The initial term of this Agreement shall be as stated on the CD&E, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, 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:

- 2.1. “**Acceptance**” means DOE has determined a portion of Deliverables provided under a Purchasing Instrument satisfy the Governmental Entity’s 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.
- 2.2. “**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.
- 2.3. “**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.
- 2.4. “**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.
- 2.5. “**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 a Governmental Entity with any Deliverables provided hereunder.

- 2.6. **“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.
- 2.7. **“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, including its Authorized Contractors, related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor in connection with any Deliverables provided hereunder and all originals and copies of any the foregoing.
- 2.8. **“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.
- 2.9. **“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 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.
- 2.10. **“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.
- 2.11. **“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.

- 2.12. **“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel hereunder or otherwise related to or used in conjunction with any Deliverables, in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.
- 2.13. **“Enhancements”** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications or other enhancements made to or with respect to any 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.
- 2.14. **“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.
- 2.15. **“I.T. Governance Document(s)”** or **“Governance Document(s)”** means any Information Technology policies, standards, processes, guidelines, or procedures developed by OCIO or DOE.
- 2.16. **“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.
- 2.17. **“Proposal”** or **“Vendor’s Proposal”** means Vendor’s Response to the RFP dated - - -.
- 2.18. **“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 deemed necessary by DOE, such as compensation and delivery dates.
- 2.19. **“Request for Proposal”** or **“RFP”** means the Request for Proposal identified on the CD&E, including any attachments or amendments thereto.
- 2.20. **“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.
- 2.21. **“Services”** may include:
- 2.21.1. The System;
 - 2.21.2. Related hosting and maintenance services related to the System;
 - 2.21.3. Vendor configured & implemented ESL online instructional platform;

- 2.21.4. Any other services included within the Scope of the RFP and Proposal, including Sourced Goods or Open Market Items.
- 2.22. **“Software”** means any and all other software, programs, applications, modules and components, in object code form, all related Documentation, Enhancements, and Source Code and all copies of the foregoing.
- 2.23. **“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.
- 2.24. **“Special Terms and Conditions”** means any attachment hereto entitled, in whole or in part, **“Special Terms and Conditions.”**
- 2.25. **“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.
- 2.26. **“System”** means a web-based, portal that is a configurable, vendor-hosted online instructional platform for adults designed for English as a second language (ESL) students and as further described in the RFP and Vendor’s Proposal.
- 2.27. **“Third Party”** means a person or entity (including, any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.
- 2.28. **“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.
- 2.29. **“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.

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, and any Service Level Agreement or other Special Terms and Conditions 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 are mailed or shipped, Vendor or Vendor Contractors shall bear all freight, shipping, handling, and insurance costs for the delivery and shall bear all risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.

3.1.2.2. 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 any Software or other Deliverables 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. *Sourced Goods or Open Market Items.* Vendor shall identify and recommend to DOE all Sourced Goods and 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. Solely to extent Sourced Goods and Open Market Items are generally deemed incidental to the total transaction by DOE or there exists a separate, legal procurement basis to justify the purchase, DOE may procure such Sourced Goods and Open Market Items through Vendor hereunder. Vendor represents and warrants the following with respect to all Sourced Goods or Open Market Items:

3.1.3.1. Equipment or hardware. Any equipment or hardware provided hereunder will be new and unused; Title to such equipment or hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions; 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 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.

3.1.3.2. 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.

3.1.3.3. 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 Sourced Goods and Open Market Items provided 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 Sourced Goods and Open Market Items under any related license or other agreement between Vendor and the applicable Third Party.

- 3.1.4. *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.
- 3.1.5. *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:
 - 3.1.5.1. *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.
 - 3.1.5.2. *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.
 - 3.1.5.3. *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. *Grant of License.* Vendor grants to DOE and its Authorized Contractors for DOE's business activities, a non-exclusive license to: (i) access, use and, to the extent necessary, maintain and support, the System; and (ii) access, use, reproduce and distribute Documentation. If the System is provided/delivered by some other delivery model, Vendor shall execute a mutually agreeable license agreement(s) with applicable Governmental Entities, the terms and conditions of which are acceptable to DOE; provided that the General Provisions of this Agreement shall apply.
- 3.2.2. *Configuration.* Vendor will modify and configure the System to satisfy DOE's specific needs in accordance with the terms and conditions of the applicable Purchasing Instrument(s).
- 3.2.3. *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. Fees for Services. 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, 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 4.7 (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 an 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:

- 5.1.1. Require Vendor to correct and repair such Deliverable(s) within such period of time as DOE may specify in a written notice to Vendor;
- 5.1.2. 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);
- 5.1.3. 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
- 5.1.4. 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.

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. Except for Sourced Goods and Open Market Items, 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 Term, 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 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 Specifications, 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 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 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 of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, Vendor shall, at 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 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 their employees, officers, board members, agents, representatives, and officials ("**Indemnitees**") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and any other expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including any claims related to, resulting from, or arising out of:
- 8.1.1. Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor, directly or indirectly, of any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or misleading; 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 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 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 8.1.9, 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 or the State 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 DOE, and DOE 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. Soley 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 the costs, expenses and attorney fees of other counsel retained by or on behalf of the 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 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 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, and solely to the extent Vendor, Vendor Contractors, or Vendor Personnel store, process, transmit, retain, or otherwise maintain Customer Data on a Governmental Entity's behalf, 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 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 such Governmental Entity.

- 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, and solely to the extent Vendor stores, processes, transmits, retains, or otherwise maintains Customer Data on DOE’s, the following shall apply:
- 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 the Governmental Entity, 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.
- 11.2.3.2. 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.
- 11.2.3.3. 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.
- 11.2.3.4. 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.
- 11.2.4. *Backup and Recovery.* Except as otherwise set forth in a Purchasing Instrument, Vendor is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within two (2) hours at any point in time. Additionally, unless otherwise provided in a Purchasing Instrument, Vendor shall store a backup of Customer Data in an off-site "hardened" facility no less than daily, maintaining the security of 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 in resolving and mitigating any damage from such actual or suspected Security Breach at Vendor's sole cost. At no additional cost to DOE or the State of Iowa, Vendor and Vendor Contractor will fully cooperate with DOE and its Authorized Contractors of either 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 in fully rectifying/responding to such Security Breach, including notifying all of DOE's 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 or the costs, expenses and attorney fees of other counsel retained by the State or DOE) related to, arising out of, or incurred by or on behalf of any 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.

11.5. Reserved.

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, such as a Business Associate Agreement (“BAA”) or Criminal Justice Information System (“CJIS”) Security Addendum, or any other non-disclosure or confidentiality agreements in connection with this Agreement or any related agreement deemed necessary by DOE (“Ancillary Agreement(s)”). Such Ancillary Agreements shall be attached as Special Terms and Conditions hereto and incorporated by reference as if fully set forth herein.
- 12.2. Immigration Status. Vendor and Vendor Contractors are responsible for ensuring Vendor Personnel possess and maintain valid Visas for any Vendor Personnel for whom a Visa is required. 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. Independent Contractor. Vendor is an independent contractor performing services for DOE.
- 12.4.1. Vendor, Vendor Contractors, and Vendor Personnel shall not hold itself out as an employee or agent of any Governmental Entities.
- 12.4.2. 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.
- 12.4.3. 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.
- 12.4.4. 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.
- 12.4.5. 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.
- 12.4.6. During any engagement under this Agreement, Vendor Personnel may perform work on behalf of, and provide Deliverables to, Third Parties, and may market and advertise their services to Third Parties, so long as such activities do not: (a) violate any terms or conditions of this Agreement; (b) adversely affect the performance or provisioning of 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.
- 12.4.7. Vendor and Vendor Contractors shall be free to hire employees as is necessary for their business purposes; provided, that such employees providing or provisioning 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.
- 12.4.8. 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.

- 12.5. 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.
- 12.6. 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.
- 12.7. Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to 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.
- 12.8. Assignment and Delegation. This Agreement may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that 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.

- 12.9. 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. 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 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.
- 12.10. Integration. This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included in this Agreement. Thus, 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.
- 12.11. 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.

- 12.12. 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.
- 12.13. Notices. Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice (identified below) at the address of the Party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the State:

TBD

If to Vendor:

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

- 12.16. Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all Vendor Contractors and Vendor Personnel providing Deliverables hereunder are responsive to DOE's requirements and requests in all respects.
- 12.17. Authorization. Vendor represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Vendor, enforceable in accordance with its terms.
- 12.18. Successors in Interest. All 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.
- 12.19. Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the Term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, 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.
- 12.20. 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.
- 12.21. 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.
- 12.22. Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.

- 12.23. Attachments. The Parties agree that if an Addendum, Attachment, Rider, Schedule, Appendix, or Exhibit is attached hereto by the Parties, and referred to herein, then the same shall be deemed incorporated herein by reference.
- 12.24. Further Assurances and Corrective Instruments. The Parties agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.
- 12.25. Obligations of Joint Entities. If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.
- 12.26. Force Majeure. Neither Party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a “force majeure.” The term “force majeure” as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties. “Force majeure” does not include: financial difficulties of Vendor or Vendor Contractors; claims or court orders that restrict Vendor’s or Vendor Contractor’s ability to perform or deliver the 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.
- 12.27. Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.
- 12.28. Right of Inspection/Contract Compliance. Vendor shall allow 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.

- 12.29. 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.
- 12.30. 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.
- 12.31. Exclusivity. This Agreement is not exclusive. DOE may obtain similar or identical Deliverables from other vendors.
- 12.32. 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.
- 12.33. 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
- 12.34. 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.
- 12.35. Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property, including Customer Property, furnished by 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.

- 12.36. 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.

SAMPLE PURCHASING INSTRUMENT/STATEMENT OF WORK

Please Read: Instructions/guidance for using this template to draft a Statement of Work are in red italics. Delete all such instructions after the appropriate text has been added to the Statement of Work. This is only a sample, thus, not all of the sections set forth below may be applicable, depending on the project/circumstances.

PURCHASING INSTRUMENT/STATEMENT OF WORK TEMPLATE

The following Purchasing Instrument/Statement of Work (“SOW”) incorporates the terms and conditions of the Iowa Department of Education [Title], 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. This Purchasing Instrument is between Vendor and the Governmental Entity identified in the signature block, below, and is effective as of the date of last signature below. Capitalized terms not defined herein are as defined in the Agreement. The applicable Governmental Entity and Vendor may be referred to herein individually as a “Party” or collectively as the “Parties.”

1. **Executive Summary/Project Scope.** Provide a high level summary of the project/Deliverables to be provided pursuant to this Purchasing Instrument and the scope of the project, including, for example:
 - 1.1 A general description of/nature of the Deliverables;
 - 1.2 Special considerations for implementing, configuring, or installing the Deliverables, including any technological considerations or constraints;
 - 1.3 Any other characteristics of this project that must be addressed to ensure the success of the project/provisioning of Deliverables.
2. **Specifics.**
 - 2.1 Solution Components. List the solution components (including Sourced Goods and Open Market Items, *e.g.*, equipment, hardware, Software, etc.) provided by Vendor that will be used to support the requirements. Identify any special configuration requirements, and describe how such equipment, hardware, or Software will integrate with DOE’s infrastructure.
 - 2.2 Source Code. Vendor shall deliver all Source Code for the following Deliverables or Software: [List any Source Code the receipt of which is expected].
 - 2.3 Services. Provide information on the Services (*e.g.*, requirements development, solution design, configuration, installation) that will be provided by Vendor, and a description of the methodology Vendor will use to accomplish the work.
 - 2.4 Training and Knowledge Transfer. Provide an overview of training services to be provided by Vendor and any special requirements for specific knowledge transfer to support DOE’s successful implementation and use of the Deliverables. If the intent is for the Governmental Entity’s personnel to become self-sufficient in operating or maintaining the solution, determine the type of training necessary, and develop a training plan, for such user self-sufficiency.
 - 2.5 Support. Document the level of ongoing support, required from Vendor to effectively make use of any Deliverables. This may include conversion support, legacy system integration, transition assistance, solution maintenance (including maintenance level), or other specialized consulting to facilitate delivery or use of the solution.
 - 2.6 Documentation. Vendor shall provide all Documentation required for the Governmental Entity and its personnel to make use of the Deliverables, including but not limited to: List any specific Documentation needed to utilize the Deliverables.

3. **Delivery Timeframes/Period of Performance.** Specify applicable delivery timeframes for any Deliverables to be provided hereunder, and the time frames during which any ongoing Deliverables will be provided, such as ongoing maintenance or support.
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. **The following is intended solely for purposes of example.**

#	Milestone	Deliverable(s)	Schedule	Total Payment	Retained Amounts	Net Payment	Performance Standards
1	Project Kick-Off Meeting	--	Effective Date + 5 days	\$--	\$--	--	
2	Site Survey	Project Plan	Effective Date + 10 days	\$10,000	\$1,000	\$9,000	
3	Installation of Software	--	Effective Date + 15 days	\$--	\$--	\$--	\$1,000
4	Configuration and Vendor testing	Testing results	Effective Date + 20 days	\$10,000	\$1,000	\$9,000	\$1,000
5	Training	Training Manual	Effective Date + 30 days	\$20,000	\$2,000	\$18,000	\$1,000
6	Governmental Entity Acceptance Testing	--	Effective Date + 30 days	\$--	\$--	\$--	
7	Project Completion		Effective Date + 45 days	\$10,000	(\$4,000)	\$14,000	\$2,000
	Total			\$50,000		\$50,000	

5. Governmental Entity Responsibilities. The following is solely for purposes of example.

- 5.1 The Governmental Entity shall commit staff and resources necessary for successful execution of the Agreement.
- 5.2 The Governmental Entity shall make personnel available to discuss and provide the necessary information required for Vendor to perform/provide the Deliverables, to perform testing, and to define delivery protocols for data feeds.
- 5.3 The Governmental Entity shall determine, define, and execute communication and reporting protocols related to the Agreement.
- 5.4 The Governmental Entity shall identify applicable training requirements.

6. Assumptions. List any assumptions here.

7. Security. Document (and subsequently provide to Vendor) any additional security requirements over-and-above the standard security requirements required by the Agreement, including any DOE's then-current security policies, standards, procedures, and/or exceptions that apply to this project.

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:	
Fax number:	
Email address:	
Representative	TBD
Governmental Entity:	
Address:	
Telephone number:	
Fax number:	
Email address:	

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

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

[Redacted]
("Vendor")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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 [Title] 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 herein are as defined in the Agreement.

1. **Overview.** This attachment describes certain performance standards and service levels to be achieved by Vendor in providing the Deliverables to DOE.
2. **Service Levels.**

Performance Standard	Description	Standard	Performance Target	Calculation	Frequency
Customer Satisfaction - includes both the AEL program management and the adult learners using the system	Survey provided after first quarter of providing Deliverables to DOE and annually thereafter	The return rate for surveys (considered internal) should be 30-40% for each identified customer base	70% of returned surveys from each customer base should score as satisfied or above	Online survey provided after first quarter of engagement and then annually	Quarterly/ Annually
System Availability	System is available	Access to the system and hosting service where system is installed is available	99%	Measured during normal work hours (7-5, M-F).	Monthly
System Usage	The tracking and distribution of seats/users are optimized across programs and by end users.	The State’s expectation is that the seats/users are tracked and distribution is flexible. State expects contractor to regularly communicate seats/users usage tracking info to AEL programs so State can make adjustments to allocations based on usage patterns.	85%	Measured by number of active seats/users registered in the system and by seat/users allocation to programs	Monthly during implementation phase and then quarterly

3. Reporting/Audits.

- 3.1. *Reporting.* Vendor shall track and report monthly to DOE a Service Level Credit regarding Vendor's satisfaction of the service levels and performance measures established in Section 2. Such report shall include metrics specifying whether the applicable Performance Standards were met and, if not, to what degree.
- 3.2. *Audits.* DOE or its designee may audit Vendor's measurement, monitoring, and reporting on all service levels herein, and Vendor shall provide, upon request, access to the data used by it 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.

4. Remedies.

- 4.1. *Service Level Credits.* Failure to achieve any of the service levels described in Section 2 shall constitute a "**Service Level Failure(s)**" and DOE shall be entitled to the following remedies:
 - 4.1.1. For a first offense with respect to any particular Performance Standard, Vendor will be issued a warning by SO and a plan will be developed to improve the Service Level Failure within thirty (30) days;
 - 4.1.2. For a second offense with respect to any particular Performance Standard, Vendor will be liable to DOE for a one percent (1%) rebate on its prior month's purchases, "**Service Level Credit**";
 - 4.1.3. For a third offense with respect to any particular Performance Standard, Vendor will be liable to SSO for a two percent (2%) rebate on its prior month's purchases, "**Service Level Credit**";
 - 4.1.4. For a fourth offense or any subsequent offense with respect to any particular Performance Standard, Vendor will be liable to DOE for a three percent (3%) rebate on its prior month's purchases, "**Service Level Credit.**"
- 4.2. *Service Level Credits.* Upon the accrual of one or more Service Level Credits, the sum of the corresponding Service Level Credits shall be credited to DOE. Vendor shall notify DOE if it becomes entitled to a Service Level Credit, which notice shall be included in the monthly performance reports as described in Section 3. The total amount of Service Level Credits Vendor will be obligated to pay to DOE for 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 does not owe Vendor for any Deliverables for any (3) month period during which it is entitled to a Service Level Credit(s), Vendor will issue a refund to DOE.
- 4.3. *Termination for Chronic Service Level Failures.* In addition to its termination rights under the Agreement, DOE may, in its sole discretion, terminate the Agreement, or DOE may, in its sole discretion, terminate any active Purchasing Instruments, without any further obligation to Vendor, for consistent or recurring Service Level Failures.

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute these Special Terms and Conditions/Service Level Agreement, 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: _____