

## REQUEST FOR PROPOSAL

### RFP COVER SHEET

#### Administrative Information

<b>RFP Number</b>	RFP1419282089	<b>Title of RFP</b>	eScholar Maintenance, Support and Enhancements	
<b>Agency</b>	Iowa Department of Administrative Services (DAS) on behalf of the Department of Education			
<b>Number of years of the initial term of the contract</b>	3	<b>Number of possible annual extensions</b>	3	
<b>State Issuing Officer:</b> Kelli Sizenbach Phone: 515.725.2275 E-mail: kelli.sizenbach@iowa.gov				
<b>Mailing Address:</b> Iowa Department of Administrative Services Hoover State Office Building, Level 3 1305 East Walnut Street Des Moines, IA 50319-0105				
<b>PROCUREMENT TIMETABLE—Event or Action</b>			<b>Date/Time (Central Time)</b>	
State Posts Notice of RFP on TSB website			April 19, 2019	
State Issues RFP			April 22, 2019	
RFP written questions, requests for clarification, and suggested changes from Respondents due			April 30, 2019	
Follow-up RFP written questions, requests for clarification, and suggested changes from Respondents due (no questions accepted or responded to after this date)			May 9, 2019	
Proposals Due			May 21, 2019/3:00 P.M.	
<b>Relevant Websites</b>				
Internet website where Addenda to this RFP will be posted <a href="http://bidopportunities.iowa.gov">http://bidopportunities.iowa.gov</a>				
Number of Copies of Proposals Required to be Submitted: 1 Original, 1 Digital, & 2 Copies				
<b>Firm Proposal Terms</b>				
The minimum number of days following the deadline for submitting proposals that the Respondent guarantees all proposal terms, including price, will remain firm is 120 Days.				

## SECTION 1 INTRODUCTION

### 1.1 Purpose

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

### 1.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

### 1.3 Overview of the RFP Process

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

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

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

### 1.4 Objectives

The State of Iowa objectives are:

- To support and maintain Iowa's Unique Identification system.
- To have the ability to enhance the existing Unique Identification system.
- To be able to create new identification numbers for new K-12 students.
- To be able to resolve discrepancies between duplicate or multiple identifiers assigned to students.
- To be able to connect to 330 district student information systems statewide using the School Interoperability Framework to Iowa's Unique ID system.

### 1.5 Background

The requirement for a statewide uniform student identification system is outlined in Iowa Code 256.9(44). The Department of Education implemented a unique identification system in 2004 in order to meet this requirement. Currently, Iowa uses the eScholar Unique Identifier system. The Department is seeking a vendor to provide maintenance and support for the existing system. The system is hosted at the State of Iowa. Vendors must have prior knowledge and experience supporting this system for other states or large school districts.

<b>SECTION 2      ADMINISTRATIVE INFORMATION</b>
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**2.1 Issuing Officer**

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

**2.2 Restriction on Communication**

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

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

**2.3 Downloading the RFP from the Internet**

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

**2.4 Procurement Timetable**

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

**2.5 Questions, Requests for Clarification, and Suggested Changes**

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

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

## **2.6 Amendment to the RFP**

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

## **2.7 Amendment and Withdrawal of Proposal**

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

## **2.8 Submission of Proposals**

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

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

## **2.9 Proposal Opening**

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

## **2.10 Costs of Preparing the Proposal**

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

## **2.11 No Commitment to Contract**

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

## **2.12 Rejection of Proposals**

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

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

**2.13 Nonmaterial Variances**

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

**2.14 Reference Checks**

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

**2.15 Information from Other Sources**

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

**2.16 Verification of Proposal Contents**

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

**2.17 Proposal Clarification Process**

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

**2.18 Disposition of Proposals**

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

**2.19 Public Records and Requests for Confidential Treatment**

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

**2.20 Form 22 Request for Confidentiality**

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

**2.21 Copyright Permission**

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

**2.22 Release of Claims**

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

**2.23 Respondent Presentations**

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

**2.24 Evaluation of Proposals Submitted**

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

**2.25 Award Notice and Acceptance Period**

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



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

**2.26 No Contract Rights until Execution**

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

**2.27 Choice of Law and Forum**

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

**2.28 Preference**

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

**2.29 Restrictions on Gifts and Activities**

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

**2.30 No Minimum Guaranteed**

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

**2.31 Post Solicitation Debriefing**

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

**2.32 Appeals**

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

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

<b>SECTION 3      FORM AND CONTENT OF PROPOSALS</b>
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**3.1 Instructions**

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

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

**RFP Number: RFP1419282089**  
**RFP Title: eScholar Maintenance, Support and Enhancements**  
**Kelli Sizenbach**  
**Iowa Department of Administrative Services**  
**Hoover State Office Building, Level 3**  
**1305 East Walnut Street**  
**Des Moines, IA 50319-0105**

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

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

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

Cost Proposal Envelope Contents  
Original Cost Proposal  
Cost Proposal on digital media

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

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

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

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

### **3.2 Technical Proposal**

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

#### **Exhibit 1 - Transmittal Letter (Required)**

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

#### **Exhibit 2 - Executive Summary**

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

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

#### **Exhibit 3 - Firm Proposal Terms**

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

#### **Exhibit 4 - Respondent Background Information**

The Respondent shall provide the following general background information:

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

**Exhibit 5 - Experience**

The Respondent must provide the following information regarding its experience:

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

**Exhibit 6 - Termination, Litigation, and Debarment**

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

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

**Exhibit 7 - Criminal History and Background Investigation**

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

**Exhibit 8 - Acceptance of Terms and Conditions**

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

**Exhibit 9 - Certification Letter**

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

**Exhibit 10 - Authorization to Release Information**

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

**Exhibit 11 – Mandatory Specifications**

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

**Exhibit 12 – eScholar Experience**

- Describe Respondent's experience working with eScholar Unique ID.
- Describe Respondent's experience enhancing eScholar Unique ID.

**Exhibit 13 – eScholar Maintenance and Support**

- Describe the proposed maintenance and support plan.
- Describe the proposed maintenance schedule.
- Describe the ability to implement updates, bug fixes and patches.
- Describe the ability to troubleshoot the current system.
- Describe the ability to provide a 99.9% up time.
- Describe how service tickets are placed.
- Provide the anticipated response times to service calls and inquiries.

**Exhibit 14 – eScholar Enhancements**

- Describe the ability to enhance eScholar.
- Describe the process in which enhancements are requested by the DOE.

**Exhibit 15 – Implementation Plan**

Describe recommended implementation strategy including on-site coordination and support services, best practice consulting options and professional services. Identify any third party Respondents involved in Respondent's implementation strategy and describe these relationships. Describe the skills and time required by State of Iowa personnel for initial installation and implementation of the proposed system. Provide an estimate of State of Iowa staff time required to complete the installation. Describe the documentation provided with the product along with applicable costs for any additional documentation. Please describe Respondent's experience with installations similar in size. Please provide an implementation schedule, based on weekly milestones (not dates).

### **Exhibit 16 – Optional Features**

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

### **Exhibit 17 - Addendums**

Provide signed copy of posted RFP addendums.

### **Exhibit 18 – Performance-Based Criteria**

Performance-based measures are required to be included in any State contract pursuant with Iowa Code section 8.47 (1).

- Describe any performance-based incentives and disincentives that the Respondent would propose including in the resulting contract.
- What standards have you set for Respondent’s account representatives? How are they measured?
- Are the results shared with the representatives and Respondent’s clients?
- What results are shared and how often?

### **Exhibit 19 - Request for Confidentiality**

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

## **3.3 Cost Proposal**

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

- Provide any one time and recurring costs for the solution. Recurring costs are to be for a 6 year period to cover initial term and extensions to contract.
- Annual licensing fee
- Hourly cost for enhancements
- Any other costs associated with proposed system.
- Pricing for options.

### **3.3.1 Payment Methods**

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

#### **3.3.1.1 Credit card or ePayables**

The State of Iowa’s Purchasing Cards (Pcards) and ePayable solution (EAP) are commercial payment methods utilizing the VISA credit card network. The State of Iowa will not accept price changes or pay additional fees if

Respondent uses the Pcard or EAP payment methods. Pcard-accepting Respondents must abide by the State of Iowa's Terms of Pcard Acceptance, as provided in Section 6.6 of the RFP. Respondents must provide a statement regarding their ability to meet the requirements in this subsection, as well as identifying their transaction reporting capabilities (Level I, II, or III).

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

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

[https://das.iowa.gov/sites/default/files/acct\\_sae/man\\_for\\_ref/forms/eft\\_authorization\\_form.pdf](https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/eft_authorization_form.pdf)

**3.3.1.3 State Warrant**

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

**3.3.2 Payment Terms**

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

**3.3.3 Respondent Discounts**

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

**3.3.3.1 Prompt Payment Discount**

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

**3.3.3.2 Cash Discount**

The State may consider cash discounts when scoring Cost Proposals.



<b>SECTION 4      SPECIFICATIONS</b>
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**Overview**

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

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

**4.1 Respondent Requirements**

- 4.1.1** Must demonstrate prior experience providing maintenance, support and enhancements for eScholar Unique ID.
- 4.1.2** Must be able to provide annual licensing of the eScholar Unique ID System.
- 4.1.3** Must follow the requirement for a statewide uniform student identification system outlined in Iowa Code 256.9(44)

**4.2 Implementation**

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

**4.3 Maintenance and Support Services**

- 4.3.1** Facility will perform operational maintenance to the system.
- 4.3.2** Respondent will provide preventative maintenance and inspection on a bi-annual basis.
- 4.3.3** Respondent will provide same day response time on system issues and outages.

**4.4 Training**

Respondent will provide general user training and administrator training.

<b>SECTION 5      EVALUATION AND SELECTION</b>
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**5.1 Introduction**

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

**5.2 Evaluation Committee**

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

**5.3 Technical Proposal Evaluation and Scoring**

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

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

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

**5.4 Cost Proposal Scoring**

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

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

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

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

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

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

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

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

## **5.5 Tied Score and Preferences**

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

## SECTION 6 CONTRACT TERMS AND CONDITIONS

### 6.1 Contract Terms and Conditions

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

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

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

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

### 6.2 Contract Length

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

### 6.3 Quarterly Report

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

#### **6.4 Terms and Conditions for State of Iowa Purchasing Cards**

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

- Contractor shall comply with Payment Card Industry Data Security Standard (PCI DSS) to assure confidential card information is not compromised;
- Contractor shall adhere to Fair and Accurate Credit Transactions Act requirements that limit the amount of consumer and account information shared for greater security protection;
- Contractor shall not write down card numbers or store card information. When accepting orders by phone, Contractor shall process the transaction during the call and send itemized receipts (excluding card numbers) to the cardholder by fax, email, or mail (with delivery);
- Contractor shall process payment for items when an order is placed only for items currently in stock and available for shipment, and only for services already rendered;
- Contractor shall confirm that the name of purchaser matches the name on the card;
- Contractor shall ensure Internet orders are processed via secure websites, featuring Verisign, TRUSTe, BBBOnline, or "https" in the web address;
- Contractor shall shred any documentation with credit card numbers.

**Attachment #1  
Certification Letter**

(Date) \_\_\_\_\_

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

Re: RFP1419282089- PROPOSAL CERTIFICATIONS

Dear Kelli:

I certify that the contents of the Proposal submitted on behalf of **(Name of Respondent)** in response to **Iowa Department of Administrative Services** for RFP1419282089 for eScholar Maintenance, Support and Enhancements are true and accurate. I also certify that Respondent has not knowingly made any false statements in its Proposal.

**Certification of Independence**

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

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

**Certification Regarding Debarment**

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

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

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

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

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

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

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

Sincerely,

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name and Title of Authorized Representative**

\_\_\_\_\_  
**Date**

**Attachment #2**  
**Authorization to Release Information Letter**

(Date) \_\_\_\_\_

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

Re: RFP1419282089- AUTHORIZATION TO RELEASE INFORMATION

Dear Karl:

**(Name of Respondent)** hereby authorizes the **Iowa Department of Administrative Services** ("Agency") or a member of the Evaluation Committee to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Respondent in response to RFP1419282089.

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

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

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

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

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

Sincerely,

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name and Title of Authorized Representative**

\_\_\_\_\_  
**Date**



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

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

**1. Confidential Treatment Is Not Requested**

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

**2. Confidential Treatment of Information is Requested**

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

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

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

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

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

**Part 1 – No Confidential Information Provided**

**Confidential Treatment Is Not Requested**

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

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

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

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

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

**Part 2 - Confidential Treatment is Requested**

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

**NOTE:**

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

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

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

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

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

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

\_\_\_\_\_  
Company

\_\_\_\_\_  
RFP Number

\_\_\_\_\_  
RFP Title

\_\_\_\_\_  
Signature (required)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Attachment #4  
Response Check List**

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

## Attachment #5

### Iowa Department of Education eScholar Maintenance, Support and Enhancements

This Agreement for Education eScholar Maintenance, Support and Enhancements 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 \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_ (“**Vendor**”). The parties may be referred to herein individually as a “**Party**” or collectively as the “**Parties.**” The Parties agree to the following:

#### 1. Overview

##### 1.1. Purpose

This Agreement establishes terms and conditions pursuant to which DOE may procure 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:

“**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.

“**Acceptance Criteria**” means the specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, and/or other criteria designated by DOE and against which Acceptance Tests are conducted, including but not limited any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, to the extent applicable the RFP and Proposal, any Documentation, and any applicable state, federal, foreign and local laws, rules and regulations.

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

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

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

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

**“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.

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

**“Customer-Owned Deliverables”** means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of DOE or for a specific project under this Agreement, including all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables,

including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto.

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

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

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

**“Enhancements”** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications or other enhancements made to or with respect to 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.

**“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.

**“I.T. Governance Document(s)”** or **“Governance Document(s)”** means any Information Technology policies, standards, processes, guidelines, or procedures developed by OCIO or DOE.

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

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

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

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

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

**“Services”** may include:

- (a) Maintenance, support, and enhancement services which include, but are not limited to:
  - a. Troubleshoot the system,
  - b. Implement bug fixes and patches,
- (b) Any other services included within the Scope of the RFP and Proposal, including Sourced Goods or Open Market Items.

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

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

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

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

**“System”** means the State’s Iowa Education Portal and as further described in this attachment under section 2(a) Services.



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

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

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

### **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. Specific Services**

**3.2.1. Reserved**

**3.2.2. Configuration**

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

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

**7.5. Workmanlike Manner**

Vendor represents, warrants, and covenants that all Services to be performed under this Agreement shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Acceptance Criteria of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the

absence of a Specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as DOE notifies Vendor of any Services performed in violation of this standard, Vendor shall re-perform the Services at no cost to DOE, such that the Services are rendered in the above-specified manner, or if Vendor is unable to perform the Services as warranted, Vendor shall reimburse DOE any fees or compensation paid to Vendor for the unsatisfactory services.

**7.6. Compliance with Law**

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

- 7.6.1.** Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State's written request, Vendor shall submit to the State a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
- 7.6.2.** Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
- 7.6.3.** Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 7.6.4.** Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 7.6.5.** Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.0, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
- 7.6.6.** All applicable I.T. Governance Document(s).
- 7.6.7.** To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, any terms or conditions applicable to Vendor as provided to Vendor by DOE.

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

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

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

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

**10.2. Treatment of Vendor's Confidential Information**

**10.2.1. Safeguarding Obligation**

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

**10.2.2. Destruction or Return of Vendor's Confidential Information**

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

**10.2.3. Compelled Disclosures**

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

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

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

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

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

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

**11.2. Personnel Safeguards**

**11.2.1. Background Checks**

**11.2.1.1. 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.

**11.2.1.2. 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.

**11.2.1.3.** 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.

**11.2.2. 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.

**11.2.3. Security Awareness Training**

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

**11.2.4. 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.

**11.2.5. 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.

**11.3. Security Breaches**

**11.3.1. 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.

**11.3.2. 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.

**11.3.3. 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.

**11.4. 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 [ ] 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:**

Jay Pennington, Bureau Chief  
Iowa Department of Education  
400 East 14th Street  
Des Moines, IA 50319

**If to Vendor:**

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**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](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.

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

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

\_\_\_\_\_  
("Vendor")

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Attachment #6**  
**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 eScholar Maintenance, Support and Enhancements 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 \_\_\_\_\_, 2019. 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**

**[EXAMPLES ONLY – Vendor please replace with service level guarantees]**

Performance Standard	Description	Standard	Performance Target	Calculation	Frequency
Customer Satisfaction	For survey provided after first quarter of providing Deliverables to DOE and annually thereafter.		90%	Online survey provided after first quarter of engagement, annually, and at conclusion of each work assignment	Quarterly
System Availability	System is available		99%	Measured during normal work hours (7-5, M-F).	Monthly

**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: \_\_\_\_\_

**Attachment #7**  
**Special Terms and Conditions**  
**Insurance**

**1. Insurance Requirements**

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

**2. Insurance Policies**

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



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

### 3. Claims Provision

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

### 4. Certificates of Coverage

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

### 5. Liability of Vendor

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

**6. Waiver of Subrogation Rights**

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

**7. Filing of Claims**

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

**8. Proceeds**

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

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

**Iowa Department of Education**  
 (“DOE” or “State”)

\_\_\_\_\_  
 (“Vendor”)

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_