

## Request for Proposal

### RFP Cover Sheet Administrative Information

<b>Title of RFP:</b> Child and Adult Care Program (CACFP) Home Sponsor Management Plan		<b>RFP Number:</b> RFP0918005062	
<b>Agency:</b> Department of Administrative Services Central Procurement Bureau (DAS CPB) on behalf of the Department of Education			
Number of years of initial contract term: 1 Year	Number of possible annual extensions: 5	Available to Political Subdivisions?	No
<b>State Issuing Officer:</b> Steve Oberbroeckling Purchasing Agent III Phone: 515-725-2090 E-mail: steve.oberbroeckling@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		16 APR 2018	
State Issues RFP		18 APR 2018	
RFP written questions, requests for clarification, and suggested changes from Contractors due:		30 APR 2018/1:00PM	
Agency's written response to questions, requests for clarification, and suggested changes due approximately:		04 MAY 2018	
Proposals Due Date:		18 MAY 2018/1:00PM	
Potential Vendor Demonstrations:		Week of May 28, 2018	
<b>Relevant Websites:</b>		<b>Web-address:</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:		Technical Proposal : 1 Original, 2 Copies, and 1 Digital Cost Proposal: 1 Original, 2 Copies, and 1 Digital	

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**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 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 Contractor(s) as described in Section 6.

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

**“General Terms and Conditions”** shall mean the Service Contract attached as Attachment #7.

**“Materially Unbalanced Response”** means a response 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.

**“Mathematically Unbalanced Proposal”** occurs when a Respondent’s pricing on some items is significantly more heavily loaded than the pricing on other items. A mathematically unbalanced response may include pricing on some item(s) that is significantly lower than the Respondent’s actual costs on those item(s) (including reasonable proportionate share of the Respondent’s anticipated profit, overhead costs, and other indirect costs that the Respondent anticipates for the performance of the items in question) and significantly higher than the Respondent’s actual costs on other item(s). In multi-year contracts, a bid might also be mathematically unbalanced if the costs are front-end loaded. A mathematically unbalanced response is also a materially unbalanced response if there is reasonable doubt that awarding the contract to the low Respondent, who submitted a mathematically unbalanced response, would result in the lowest overall cost.

**“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.

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

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

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

**1.3 Overview of the RFP Process**

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

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 6, Evaluation and Selection.

#### **1.4 Background**

One requirement to being a Sponsoring Organization for Day Care Homes in the Child and Adult Day Care Food Program is to complete a lengthy Management Plan. This plan collects a large amount of information from the Sponsor requiring data entry and supporting documents. Currently the form is on two excel spreadsheets and the supporting documents are uploaded into a separate system. The excel documents have to be downloaded – uploaded – copied – etc. These activities are a risk to the logic of the document and accuracy of the data collected. It is also a challenge to the sponsors as their systems are not all compatible to the form currently being used. This process involves multiple errors and is time-consuming for the sponsors and consultants.

An on-line annual plan document is needed due to the limitations created by the current process:

- Risk of inaccuracies due to multiple uploading – downloading – copying – pasting – etc.,
- inefficient process to complete, request and provide technical assistance, and review,
- increased time required to review documents and manage inconsistencies,
- inefficient process due to information being entered from multiple sources by multiple individuals (from organization documents, manual entry by organization or reviewer, from claim documentation, etc.),
- diversity of document types utilized and location (management plan documents [parts A&B], reviews and comments –mailed or emailed, communication by letter and email before, during and after the plan is submitted), and
- duplication of information both requested and submitted throughout the process due to the current system consisting of two forms and multiple supporting documents.

The State of Iowa objectives are:

- To obtain a more streamlined process.
- Improve efficiency.
- Improve supervision.
- Increase transparency by improving access to the plan by consultants, supervisors and sponsoring organizations.

**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.

**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 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 send 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 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 mailing 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 shall 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 Evaluation Committee has reviewed all of the Proposals submitted in response to this RFP and 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 state employees.
- 2.12.11** The Respondent provides misleading or inaccurate responses.
- 2.12.12** The Respondent's Proposal is materially unbalanced.
- 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.

### **2.13 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, that are merely a matter of form or format, that do not change the relative standing or otherwise prejudice other Contractors, that do not change the meaning or scope of the RFP, or that 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 in the public domain 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. Contractors are encouraged to familiarize themselves with Chapter 22 before submitting a Proposal. The Agency will copy and produce public records upon request as required to comply with Chapter 22 and will treat all information submitted by a Contractor as non-confidential records unless Contractor requests specific parts of the Proposal be treated as confidential at the time of the submission as set forth herein **AND the information is confidential under Iowa or other applicable law.**

### 2.19.1 Form 22 Request for Confidentiality

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

### 2.19.2 Confidential Treatment Is Not Requested

A Contractor not requesting confidential treatment of information contained in its Proposal shall complete Section I of Form 22 and submit Form 22 with the Proposal.

### 2.19.3 Confidential Treatment of Information is Requested

A Contractor requesting confidential treatment of specific information shall: (1) fully complete Section II of Form 22, (2) conspicuously mark the outside of its Proposal as containing confidential information, (3) mark each page upon which the Contractor 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 Contractor: (1) enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that supports treatment of the material as confidential, (2) justifies why the material should be maintained in confidence, (3) explains why disclosure of the material 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 Contractor to respond to inquiries by the Agency concerning the confidential status of such material.

**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 material must be excised in such a way as to allow the public to determine the general nature of the material 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. Contractors may not request confidential treatment with respect to pricing information and transmittal letters. A contractor's request for confidentiality that does not comply with this section or a contractor's request for confidentiality on information or material that cannot be held in confidence as set forth**

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

#### **2.20 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.

#### **2.21 Release of Claims**

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

#### **2.22 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.

#### **2.23 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.

#### **2.24 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.

#### **2.25 No Contract Rights until Execution**

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

**2.26 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.

**2.27 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).

**2.28 Restrictions on Gifts and Activities**

*Iowa Code Chapter 68B* restricts gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with State government. 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.

**2.29 No Minimum Guaranteed**

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

**2.30 Appeals**

Appeals of the Notice of Intent to Award are governed by the Agency's vendor appeal process. Contractors may obtain information about the appeal process from the Issuing Officer and at Iowa Administrative Code chapters 11-7 and 11-105.

**SECTION 3      FORM AND CONTENT OF PROPOSALS**

**3.1 Instructions**

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

**3.1.1** The Proposal shall be typewritten on 8.5" x 11" paper, include numbered pages, 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: 0918005062  
RFP Title: CACFP Home Sponsor Management Plan  
Steve Oberbroeckling  
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, & 2 Copies of the Technical Proposal shall be timely submitted to the Issuing Officer in a sealed envelope. 1 Original, 1 Digital, & 2 Copies of 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 and any copies  
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 separately and each will be evaluated separately.

### 3.2 Technical Proposal

The following documents and responses shall be included in the Technical Proposal in the order given below.

#### Exhibit 1 - Transmittal Letter

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. Any request for confidential treatment of information shall be included in the transmittal letter in accordance with the provisions of Section 2.19. The Respondent shall sign and submit with the Proposal the document included as Attachment #3 Form 22 – Request for Confidentiality.

#### 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, except as noted in Attachment #4 Exceptions to Terms and Conditions.
- 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 120 days 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, i.e., 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 Contractor will be required to register to do business in Iowa before payments can be made.
- For Contractor registration documents, go to:  
[http://das.gse.iowa.gov/procurement/vendor\\_reg.html](http://das.gse.iowa.gov/procurement/vendor_reg.html)

#### 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.

- Describe your firm’s competencies, expertise, and/or certifications in providing the services sought by the RFP.
- Provide examples of three engagements similar to those sought by this RFP you have successfully completed on the services sought by the RFP. Please include an explanation of project size, scope and complexity.
- 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 Contractor, following execution of the Contract.

**Exhibit 7 - Acceptance of Terms and Conditions**

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

**Exhibit 8 - 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 9 - 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 10 – 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 11 – System Functions**

The respondent shall provide detailed responses to the following key areas:

- Describe how system can be developed in C#.NET with Microsoft SQL backend.
- Provide screenshots of navigational menu screens
- Describe the ability to customize the menu screens.
- Describe how users will navigate the plan and the ability to allow user to go “back” to previous answer, screen, or section.
- Describe standard answers that can be inserted into various fields, including data, short and long answers, and calculation formulas.
- Describe any data entry limitations. For example, only so many characters are allowed in data entry fields.
- Describe how information can be auto-populated from uploaded sources and previous versions of the plan.
- Describe how standard comments can be modified.
- Describe the ability for comments visible only to various roles, e.g. State Agency, Organization.
- Describe the ability to add links to all questions allowing supporting documentation to be uploaded or information to be downloaded.
- Describe how documents available for download and uploaded documents are stored and can be retrieved.
- What is the maximum file size that can be uploaded?
- Describe “help” functions available to assist reviewers with the intent of questions.
- Describe “error” functions available to prevent continuing with incorrect, inconsistent, or incomplete information.
- Describe the ability to import data from IowaCNP.
- Provide example of how screens identify organizations.
- Provide example of an organization contact information screen.
- Describe the ability to send auto-generated email correspondence. Describe what can be sent, and how it can be modified.
- Describe the ability to send auto-generated emails at milestones within the workflow.
- Describe the ability to mark users or organizations as active or inactive.
- Describe standard answers comments that can be inserted into various fields, including technical assistance and request for revision/additional information.
- Describe the next steps if SDCRB decides to add another process to the system after the software system has been set up. I.e. a new contract template. Include typical response time. In the cost proposal, include unit cost.

### **Exhibit 12 – Workbook Management**

The respondent shall provide detailed responses to the following key areas:

- Describe how completion progress can be tracked.
- Describe how management plan and the details within each plan year can be opened and read.
- Describe how each version of the Plan will be logged and stored and how it can be opened and read.
- Describe how revisions will be displayed.
- Describe the ability to add and review attachments.
- Describe format which data reports can be viewed. Are customizable filters available?

### **Exhibit 13 – Form/Reports**

The respondent shall provide detailed responses to the following key areas:

- Describe access to plan for various roles and components.
- Describe availability to auto fill and add standard comments to workbook.
- Describe the ability to completely customize management plan and review documents.
- Provide example of financial data reporting form.
- Describe the ability to provide a plan summary report with filter options.
- Describe the ability to pull data reports using the Microsoft Excel platform.

- Describe reports showing organization information, including site-level information, organization with budget concerns, new organization contacts and previous reimbursements.
- Describe the ability to exclude inactive organizations and sites on reports.
- Describe print options.

#### **Exhibit 14 – Project Management Team**

The Respondent must show it has a knowledgeable, accessible and experienced project manager and an experienced team with the responsibility, integrity and authority to deliver the services required. The Respondent must provide specific personnel and demonstrate how their qualifications apply to the requirements listed. Provide resumes for those individuals who will be assigned to perform the work in the awarded contract.

- List all key personnel assigned to the project by level and name. Provide a description of their background, along with a summary of their experience in providing similar services, and any specialized expertise they may have. Background descriptions can be a resume, curriculum vitae (CV), or summary sheet.
  - Years of experience and employment history, particularly as it relates to the requirements of this RFP. Include experience on similar projects.

#### **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 parties 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/services along with applicable costs for any additional documentation.
- Describe Respondent’s experience with installations similar in size. Please provide an implementation schedule, based on weekly milestones (not dates).

#### **Exhibit 16 – Maintenance and Support**

- Provide detailed information on your maintenance and support requests. Include response times and the access to and timeliness of service engineers.
- Describe development time to address desired updates to proposed system.
- Describe reporting of requested repairs. Describe how these requests are tracked.
- Provide respondent’s acceptable timeline to correct issues with the system.

#### **Exhibit 17 – Customer Service**

- Describe respondent’s philosophy as it relates to the client relationship.
- Describe respondent’s communication plan. Include request tracking and status change notifications.
- Does respondent have any staff requirements as it relates to timeliness in responding to client requests, questions and complaints?
- What location/office will serve as the primary office for the State contract?
- Where is your customer service center located?
- How many client contracts does this account team manage?
- Describe the process respondent employs when a client is dissatisfied with the service it has been provided.

#### **Exhibit 18 – Optional Features**

- Describe any other related services or capabilities you would like the State to know about?
- Is there any other information you would like to share as it relates to this RFP?
- Provide detailed information for any optional items that may be available. (Include costs for these items in the Cost Proposal)



### **Exhibit 19 - Warranty**

Provide warranty documentation for your proposed solution. Describe your replacement parts program, costs, and turnaround time.

### **Exhibit 20 – Addendums**

Provide signed copy of posted RFP addendums. The addendum identifying the point value assigned to specific Section 3 Exhibits (Technical Proposal), as described in Section 5, does not need to be included in response as it will possibly be posted after Responses are delivered.

### **Exhibit 21 – Performance-Based Criteria**

Performance-based measures are required to be included in any State contract pursuant with Iowa Code section 8.47 (1) (Iowa Supp. 2001) (2001 Iowa Acts, House file 687, section 5).

- 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?
- Provide proposed Service Level Credits. Reference Attachment 7, SaaS Agreement, Exhibit C.

## **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 utilize Cost Proposal Attachment #6 format and include the following:

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

### **3.3.1 Payment Methods**

The State of Iowa, in its sole discretion, will determine the method of payment for goods and/or services as part of the Contract. The State Pcard and EAP are preferred payment methods, but payments may be made by any of the following methods: Pcard/EAP, EFT/ACH, or State Warrant. Contractors shall provide payment acceptance information in this section 3.3.1 in their Cost Proposals. **This information will not be scored as part of the Cost Proposal or evaluated as part the Technical Proposal.**

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

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

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

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

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

**3.3.1.3 State Warrant**

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

**3.3.2 Payment Terms**

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

**3.3.3 Contractor Discounts**

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

**3.3.3.1 Prompt Payment Discount**

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

**3.3.3.2 Cash Discount**

The State may consider cash discounts when scoring Cost Proposals.

#### **4.1 Overview**

The successful Contractor 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.

#### **4.2 Mandatory Specifications**

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.

##### **4.2.1 The tool shall provide:**

- 4.2.1.1** System must be functional and all work completed by November 30, 2018.
- 4.2.1.2** System must provide various roles such as Agency and Organization.
- 4.2.1.3** System must require a log-in and password.
- 4.2.1.4** System must be able to import data from IowaCNP.
- 4.2.1.5** Screens must show organization name, agreement number and type of organization.

##### **4.2.2 Implementation**

Upon award of a Contract for services the Agency shall negotiate an implementation schedule with the successful Respondent. Respondent must be available to begin work within thirty (30) calendar days of contract finalization.

##### **4.2.3 Installation**

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

##### **4.2.4 Post Delivery Documentation**

Contractor must provide the following documentation upon completion of installation:

- Operator Instructions - Written operator instructions for the operation of the system, all sub-unit assemblies, and software routines.
- Service and Operating Manuals - Current and accurate service manuals are to be provided with the system.

##### **4.2.5 Warranty**

Minimum of 5 year warranty on system must include hardware if applicable.

**4.2.6 Maintenance and Support Services**

**4.2.6.1** Contractor must perform scheduled and on-call operational maintenance to the system.

**4.2.6.2** Contractor must provide preventative maintenance and inspection on a bi-annual basis.

**4.2.6.3** Contractor must provide same-day response time on system issues and outages.

**4.2.7 Training**

Contractor must provide general user training and administrator training.

**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 Contractor offering the lowest cost to the Agency. Instead, the Agency will award to the Contractor whose Responsive Proposal the Agency believes will provide the best value to the State.

**5.2 Evaluation Committee**

The Agency will use an evaluation committee to conduct a comprehensive, fair, and impartial evaluation of 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 Scoring Breakdown**

Technical Proposal	700
<u>Cost Proposal</u>	<u>300</u>
Total	1000

**5.4 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 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 of 490 points (70%) of the available 700 points for the Technical Proposal.

An addendum identifying the point value assigned to specific Section 3 Exhibits (Technical Proposal) will be posted prior to opening submitted proposals.

**5.5 Tied Bids and Preferences**

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 contractors 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.

Notwithstanding the foregoing, if a tied bid involves an Iowa-based contractor or products produced within the State of Iowa and a contractor based or products produced outside the State of Iowa, the Iowa contractor will receive preference. If a tied bid involves one or more Iowa contractors and one or more contractors outside the state of Iowa, a drawing will be held among the Iowa contractors only.

In the event of a tied bid between Iowa contractors, the Agency shall contact the Iowa Employer Support of the Guard and Reserve (ESGR) committee for confirmation and verification as to whether the contractors have complied with ESGR standards. Preference, in the case of a tied bid, shall be given to Iowa contractors complying with ESGR standards.

Second preference in tied bids will be given to contractors based in the United States or products produced in the United States over contractors based or products produced outside the United States.

Preferences required by applicable statute or rule shall also be applied, where appropriate.

## 5.6 Cost Proposal Scoring

After the Technical Proposals are evaluated and scored, those proposals which meet the minimum score for the Technical Specifications will advance in the evaluation process and their Cost Proposals will be opened and scored.

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

Example:

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

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

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

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

**6.1 Contract Terms and Conditions**

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

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

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

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

**6.2 Attached Agreement**

The Contract will require the successful Contractor to agree to terms contained in RFP Attachment 7. Exceptions are to be noted on RFP Attachment 4.

**6.3 Additional Terms and Conditions**

Internet website where additional contract terms and conditions are posted:

**USDA [CACFP Code](#)**

**Federal Terms [Code 2 CFR](#)**

**6.4 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.

**6.5 Quarterly Report**

The Respondent shall provide an electronic detailed quarterly report to the Department on all activity under this agreement. 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.

**6.6 Insurance**

The Contract will require the successful Contractor to maintain insurance coverage(s) in accordance with the insurance provisions of the General Terms and Conditions and of the type and in the minimum amounts set forth in RFP Attachment 7.

**Attachment #1  
Certification Letter**

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

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

Re: Request for Proposal Number RFP0918005062 - PROPOSAL CERTIFICATIONS

Dear Steve:

I certify that the contents of the Proposal submitted on behalf of **(Name of Respondent)** in response to **Iowa Department of Administrative Services** for Request for Proposal Number RFP0918005062 for CACFP Home Sponsor Management Plan 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 Contractor to submit or not to submit a Proposal for the purpose of restricting competition.
5. No relationship exists or will exist during the contract period between 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) (2013)* a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under *Iowa Code chapter 423* on all sales of tangible personal property and enumerated services. The Act also requires Contractors to certify their



compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

By submitting a Proposal in response to the (RFP), the 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)*.

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) \_\_\_\_\_

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

Re: Request for Proposal Number RFP0918005062 - AUTHORIZATION TO RELEASE INFORMATION

Dear Steve:

**(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 Request for Proposal (RFP) Number RFP0918005062.

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

**CONTRACTOR NOTE: SUBMISSION OF THIS FORM 22 IS REQUIRED**

**THIS FORM 22 (FORM) MUST BE COMPLETED AND INCLUDED WITH YOUR RESPONSE (PROPOSAL) TO THE REQUEST FOR PROPOSAL (RFP). THE FORM IS REQUIRED WHETHER THE PROPOSAL DOES OR DOES NOT CONTAIN INFORMATION FOR WHICH CONFIDENTIAL TREATMENT WILL BE REQUESTED.**

**FAILURE TO SUBMIT A COMPLETED FORM WILL RESULT IN THE PROPOSAL CONSIDERED NON-RESPONSIVE AND ELIMINATED FROM EVALUATION.**

**I. Confidential Treatment Is Not Requested**

A request for confidential treatment of information contained in our Proposal is not submitted.

Company	RFP Number	RFP Title
Signature	Title	Date

\*\*\*\*\*

**II. Confidential Treatment Is Requested**

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

Per the paragraph labeled as Public Records and Requests for Confidential Treatment in section 2 of the Request for Proposal (RFP), a Contractor requesting portions of its Proposal be maintained in confidence must complete this form and submit it with its Proposal. Contractors should read and familiarize themselves with chapter 22 of the Iowa Code regarding release of public records before completing this Form. Contractor shall refer to the paragraph labeled as Public Records and Requests for Confidential Treatment in section 2 of the RFP for instructions regarding how to request confidential treatment of portions of its Proposal.

**NOTE:**

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

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

**To request confidentiality, Contractor must provide the following information:**

- 1  Contractor must conspicuously mark confidential material in its Proposal in accordance with the section titled Public Records and Requests for Confidential Treatment. **Check box when completed.**
  
- 2 Contractor must specifically identify and list the Proposal section(s) for which it seeks confidentiality and answer the following questions for each section listed:
  - Explain the specific grounds in *Iowa Code Chapter 22* or other applicable law which support treatment of the material as confidential.
  - Justify why the material should be kept in confidence.
  - Explain why disclosure of the material would not be in the best interest of the public.
  - Provide the name, address, telephone, and email for the Contractor’s person authorized to respond to inquiries by the Agency concerning the status of confidential materials.

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

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

- 3  Contractor must submit a Public Copy of its Proposal from which the confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the Proposal as possible. **Check box when completed.**

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

***\*Failure to provide the information required on this Form may result in rejection of Contractor’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.***

\_\_\_\_\_ Company

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

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

\_\_\_\_\_ Signature

\_\_\_\_\_ Title

\_\_\_\_\_ Date

-----  
**Department of Administrative Services – Central Procurement Bureau Review**  
***(For Agency use only)***

- Contractor's Proposal is rejected as non-compliant because of one or more of the following reasons:
  - Contractor's Proposal is rejected due to not submitting a fully completed Form 22 to either request or not request confidential treatment of information.
  - Contractor's Proposal is rejected due to the request to treat the entire response as confidential.
  - Contractor's Proposal is rejected due to the request to treat Proposal pricing as confidential.
  - Contractor requested confidentiality without submitting a ***fully completed*** Form 22.
  - Contractor requested confidentiality and failed to conspicuously mark such material as confidential within its Proposal in accordance with the RFP.
  - Contractor requested confidentiality without submitting a public copy of its Proposal with the confidential information redacted.
  - Contractor requested confidentiality on material in contravention of the RFP.
  - Other: \_\_\_\_\_.
- Contractor's submission is accepted.<sup>1</sup>

\_\_\_\_\_  
Purchasing Agent Signature

\_\_\_\_\_  
Date

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

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

\_\_\_\_\_  
**NOTE:** Agency's acceptance of Contractor's submission should not be construed as Agency's approval of Contractor's request for confidentiality. Instead, acceptance of Contractor's submission simply means that Agency believes Contractor's Form 22 appears fully completed in accordance with the RFP.

**Attachment #4**  
**Exceptions to Terms and Conditions**

Proposed exceptions should be listed in this in this attachment of contractor's proposal. Any proposed exceptions should be in a table similar to the one below:

<b>Section #</b>	<b>Original Text Referenced</b>	<b>Proposed Language</b>	<b>Reason for Exception</b>

**Attachment #5  
Response Check List**

RFP REFERENCE	RESPONSE INCLUDED	
	Yes	No
<b>Technical Proposal</b>		
One (1) original, two (2) copies of Proposal and One (1) electronic copy on digital media.		
One (1) Public Copy with Confidential Information Excised (optional)		
Exhibit 1 – Transmittal Letter (Include Attachment #3 – Form 22)		
Exhibit 2 – Executive Summary (If applicable, include Attachment #4)		
Exhibit 3 – Firm Proposal Terms		
Exhibit 4 – Respondent Background Information		
Exhibit 5 – Experience		
Exhibit 6 – Termination, Litigation, and Debarment		
Exhibit 7 – Acceptance of Terms and Conditions		
Exhibit 8 – Certification Letter (Include Attachment #1)		
Exhibit 9 – Authorization to Release Information (Include Attachment #2)		
Exhibit 10 – Mandatory Specifications		
Exhibit 11 – System Functions		
Exhibit 12 – Workbook Management		
Exhibit 13 – Form/Reports		
Exhibit 14 – Project Management Team		
Exhibit 15 – Implementation Plan		
Exhibit 16 – Maintenance and Support		
Exhibit 17 – Customer Service		
Exhibit 18 – Optional Features		
Exhibit 19 - Warranty		
Exhibit 20 – Addendums		
Exhibit 21 – Performance-Based Criteria		
<b>Cost Proposal</b>		
One (1) original, two (2) copies of Proposal and One (1) electronic copy on digital media. (Include Attachment #6)		

**Attachment #6  
Cost Proposal Form**

**Payment Terms**

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

What discount will you give for payment in 15 days? \_\_\_\_\_

What discount will you give for payment in 30 days? \_\_\_\_\_

**Cost Proposal**

Contractor's Cost Proposal shall include an all-inclusive, itemized, total cost in Firm U.S. Dollars (including all travel, expenses, etc. in prices). All pricing to be FOB Destination, freight cost and all expenses included; and based on Net 60 Days Payment Terms. Include any escalation over the course of six years. The following template is required. Please use additional pages to provide any additional narrative support for the costing information.

Deliverable Item	Estimated # of Hours	Blended Hourly Rate	Total First Term Cost (2 Years)	Year 3	Year 4	Year 5	Year 6	Total Recurring 6 Year Costs
Core System		\$	\$	\$	\$	\$	\$	\$
Implementation		\$	\$	\$	\$	\$	\$	\$
Data Conversion		\$	\$	\$	\$	\$	\$	\$
Training		\$	\$	\$	\$	\$	\$	\$
Hosting		\$	\$	\$	\$	\$	\$	\$
Other (specify)		\$	\$	\$	\$	\$	\$	\$
Other (specify)		\$	\$	\$	\$	\$	\$	\$
<b>TOTAL COST:</b>		\$	\$	\$	\$	\$	\$	\$



**Attachment #7**  
**STATE OF IOWA SOFTWARE AS A SERVICE AND PROFESSIONAL SERVICES AGREEMENT**

This Software as a Service and Professional Services Agreement (“**Agreement**”) is entered into this [ ] day of [ ], 20 [ ] (“**Effective Date**”) by and between [Name of Vendor], [entity type (e.g., limited liability company, limited liability partnership, or corporation)] registered in the State of [..], with its principal place of business at [.. ..] (“**Vendor**”) and the State of Iowa, acting by and through the Iowa Department of Administrative Services (“**State of Iowa**” or “**State**”) for the provision of services and other deliverables in accordance with the following terms and conditions. When used herein, the term “**Agreement**” includes the body of this Agreement and any and all Statements of Work entered into by the Parties (as defined below) and all exhibits attached hereto. Vendor and the State of Iowa may be referred to in this Agreement individually as a “**Party**” and together as the “**Parties.**”

**1. Definitions.**

- 1.1 “**Acceptance Criteria**” means the Specifications, standards, performance measures, testing results and/or other criteria designated by the State and against which the Deliverables may be evaluated for purposes of acceptance testing.
- 1.2 “**Accept**” has the meaning set forth in Section 5.1.
- 1.3 “**Additional Terms**” has the meaning set forth in Section 19.13.
- 1.4 “**Application Services**” means the hosted applications and related services as described in Exhibit A.
- 1.5 “**Authorized Contractor(s)**” means independent contractors, consultants or other third parties who are retained or hired by the State, any State User or any other Governmental Entity of the State to support, modify, or enhance any Deliverables or Services, or to otherwise assist the State, any Governmental Entity, or any State Users in connection with the use of any Deliverables or Services.
- 1.6 “**Business Associate Agreement**” shall have the meaning ascribed to it under HIPAA.
- 1.7 “**Change Order**” means a written request by the State of Iowa to modify any Deliverables or Services.
- 1.8 “**Changes**” has the meaning set forth in Section 7.2.
- 1.9 “**Confidential Information**” means, subject to the provisions of this Agreement and any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party to the other Party that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential.
- 1.10 “**Deliverable(s)**” means the System, Services, Documentation, websites, content, obligations, tangible or intangible items or property, goods, work, hardware, software, applications, work product, items, data and any other goods and services at any time created, developed, produced, delivered, performed, or provided by or on behalf of, or made available through, Vendor (or any agent, or subcontractor of Vendor) in connection with this Agreement, and all related legal rights to own, use, or access the same.
- 1.11 “**Documentation**” means all of Vendor’s training course materials, system specifications and technical manuals, and all other user instructions, documentation and materials regarding the capabilities, operation, and use of the System, Services and/or Deliverables, including, but not limited to, online help screens contained in or related to the System, Application Services, and/or any other Services or Deliverables.
- 1.12 “**Error**” means (i) with respect to Application Services, Services, or Deliverables, any defect, flaw, error, bug, or problem of any kind, or any failure of the Application Services, Services, or Deliverables to conform to an applicable Specification; or (ii) with respect to the Application Services, any failure or problem that impairs or adversely affects the performance, availability, or functionality of the Application Services.
- 1.13 “**Error Correction**” means (i) with respect to the Application Services, either a modification to the Application Services that corrects an Error in all material respects, or a procedure or routine that, when implemented in the regular operation of the Application Services, eliminates the adverse effect of the Error in all material respects; and (ii) with respect to other Services or Deliverables, a modification, workaround, or upgrade that corrects an Error in all material respects or eliminates the adverse effects of the Error in all material respects.
- 1.14 “**Finally Determined**” has the meaning set forth in Section 9.1.
- 1.15 “**Force Majeure Event**” has the meaning set forth in Section 19.5.

- 1.16** “**Governmental Entity**” means any governmental entity as defined in Iowa Code Section 8A.101, or any successor provision to that section, existing now or in the future. The term Governmental Entity shall be expressly deemed to also include the Iowa Department of Administrative Services and [Name of Agency].
- 1.17** “**Go Live**” has the meaning set forth in Section 8.1.1.
- 1.18** “**Indemnified Items**” has the meaning set forth in Section 15.1.
- 1.19** “**Indemnities**” has the meaning set forth in Section 15.1.
- 1.20** “**Initial Term**” has the meaning set forth in Section 8.1.1.
- 1.21** “**Person**” shall have the meaning set forth in Iowa Code § 4.1 or any successor provision thereof.
- 1.22** “**Personal Data**” means any information relating to an identified or identifiable Person (including, without limitation, any User), including, but not limited to, Social Security or other government-issued identification numbers, account security information, financial account information, credit/debit/gift or other payment card information, account passwords, intellectual property, and sensitive or personal data (or equivalent terminology) as defined under any law, statute, directive, regulation, standard, interpretation (including any and all legislative and/or regulatory amendments or successors thereto) regarding privacy, data protection, information security obligations and/or the processing of personal data. For the avoidance of doubt, Personal Data shall include, but not be limited to:
- a) “**Protected Health Information**” or “**PHI**,” as defined under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 and including any and all legislative and/or regulatory amendments, standards, or definitions or successors thereto (as may be more specifically identified in any Business Associate Agreement(s) attached to this Agreement as set forth in Section 12.13) (referred to collectively herein as “**HIPAA**”);
  - b) Any data or information covered under or protected by federal regulations applicable to any User or Vendor set forth in 12 CFR part 30 or covered under or protected by Iowa Code chapter 715C;
  - c) Substance abuse treatment information protected by 42 C.F.R. part 2;
  - d) Mental health information concerning particular individuals protected by Iowa Code chapters 228 and 229;
  - e) HIV/AIDS diagnosis and treatment information protected by Iowa Code § 141A.9;
  - f) Licensing Board complaint files, investigative files and other information protected by Iowa Code § 272C.6(4).
- For purposes of this definition and this Agreement, “**Process**” or “**Processing**” shall mean any operation or set of operations performed upon the Personal Data, whether or not by automatic means, including collection, recording, organization, use, transfer, disclosure, storage, manipulation, combination and deletion of Personal Data.
- 1.23** “**Professional Services**” means any services performed onsite at the State of Iowa or otherwise specifically performed for the State of Iowa, including training, custom development, consulting, or implementation services.
- 1.24** “**Proposal**” has the meaning set forth in Section 19.12.
- 1.25** “**Reject**” has the meaning set forth in Section 5.1.
- 1.26** “**Release Conditions**” has the meaning set forth in Section 11.2.2.
- 1.27** “**Renewal Term**” has the meaning set forth in Section 8.1.2.
- 1.28** “**RFP**” has the meaning set forth in Section 19.12.
- 1.29** “**Services**” means the Application Services, Professional Services and Support Services, and any other services provided by or on behalf of Vendor under or through this Agreement. Services shall include the performance or provision of any Deliverables by or on behalf of Vendor under or through this Agreement, including, but not limited to, the development and implementation of the System and the provision of any other Deliverables or services as may be described in a Statement of Work.
- 1.30** “**Source Material**” means, with respect to the Application Services, the source code of such software and all related compiler command files, build scripts, scripts relating to the operation and maintenance of such application, application programming interface (API), graphical user interface (GUI), object libraries, all relevant instructions on building the object code of such application, and all documentation relating to the foregoing, such that collectively the foregoing will be sufficient to enable a person possessing reasonable skill and expertise in computer software

and information technology to build, load and operate the machine-executable object code of such application, to maintain and support such application and to effectively use all functions and features of such software.

- 1.31 “Specifications”** means any and all specifications, requirements, technical standards, performance standards, representations, warranties, criteria, acceptance criteria, and other specifications related to any Deliverables (including the Application Services) described or stated in this Agreement (including any exhibit or documentation attached to, or provided in connection with this Agreement), any Statement(s) of Work, the RFP, and, solely to the extent not inconsistent with the foregoing, the Proposal and the Documentation. Specifications shall also include the Acceptance Criteria and any requirements, standards, criteria or other specifications set forth in any applicable state, federal and local laws, rules, regulations, standards, and requirements. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.
- 1.32 “Statement of Work”** or “Statements of Work” means the initial statement of work set forth in Exhibit B to this Agreement, and any additional, sequentially numbered statement(s) of work that may be executed by the parties, and any amendments thereto. Each Statement of Work will describe the Deliverables and Services to be provided by Vendor and the fixed compensation amounts and final delivery dates associated therewith. Each Statement of Work is incorporated into this Agreement by this reference as if fully set forth in this Agreement.
- 1.33 “State of Iowa Confidential Information”** means any data, information (including, but not limited to, Confidential Information of State Users and Governmental Entities), or materials (regardless of the format or medium—digital, physical, or otherwise) disclosed or provided by or on behalf of, or for the benefit of, or otherwise obtained from, the State of Iowa, State Users, Governmental Entities, and any other Users, Authorized Contractors, Persons or entities in relation to Vendor’s performance of this Agreement or in connection with this Agreement or the Services in any way whatsoever, including but not limited to all data (including but not limited to Personal Data), information, and materials provided to or accessed by Vendor through or in connection with the Application Services or System or in connection with any other Services or Deliverables. The State of Iowa’s Confidential Information shall include State of Iowa Property.
- 1.34 “State of Iowa Manager”** has the meaning set forth in Section 18.4.
- 1.35 “State of Iowa Property”** means the State of Iowa’s Confidential Information, data, software, hardware, databases, security access, intellectual property, technologies, services, programs or other information or property possessed, owned, provided, or maintained by the State of Iowa.
- 1.36 “State Users”** means the State of Iowa, the Iowa Department of Administrative Services, [name of agency] , and any other State Governmental Entity as may be later designated by the State in its sole discretion and communicated to Vendor in writing, and any employees or Authorized Contractors of any of the foregoing.
- 1.37 “Status Meeting”** has the meaning set forth in Section 18.2.
- 1.38 “Status Report”** has the meaning set forth in Section 18.2.
- 1.39 “Support Services”** means the maintenance and other services described in Section 7 (Support Services) and in the applicable Statement(s) of Work.
- 1.40 “System”** means the Licensure Database System as more fully described in this Agreement (including Exhibit A, the initial Statement of Work, the RFP, and the Proposal) and all component parts and Deliverables which comprise the System.
- 1.41 “Term”** has the meaning set forth in Section 8.1.3.
- 1.42 “Third Party Intellectual Property”** shall mean intellectual property, including software, licensed, made, conceived, or developed by a third party and provided or used by or on behalf of Vendor in connection with or embedded in the Application Services, System, or any other Deliverables or Services provided by Vendor under this Agreement, including but not limited to any software used by or on behalf of Vendor to host the Application Services and/or System.
- 1.43 “Third Party Software”** means any third party software described in Exhibit A.
- 1.44 “Transition Period”** has the meaning set forth in Section 8.8.
- 1.45 “Users”** means the State Users, any other users of the Services and/or the System, and Persons whose personal or other data, including but not limited to Personal Data, may be stored in, processed by, or transmitted through the Services or the System.
- 1.46 “Vendor Exceptions”** has the meaning set forth in Section 19.12.

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

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

## 2. Vendor; No Subcontracting

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

## 3. State of Iowa

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

## 4. Services and Deliverables

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

4.2 Application Services. Subject to the terms and conditions of this Agreement, Vendor grants to the State of Iowa, State Users and their Authorized Contractors for the State of Iowa’s business activities, including without limitation the provision of information and services to State Users, Users (to the extent applicable), during the Term a non-exclusive license to: (i) access, use and, to the extent applicable, maintain and support, the Application Services; and (ii) access, use, reproduce and distribute Documentation.

4.3 Statement(s) of Work. Vendor will provide and make available the Deliverables described in each Statement of Work in accordance with the terms of this Agreement. Each Statement of Work will be effective and become valid and

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

- 4.4 Support Services.** Vendor will provide Support Services as set forth in Section 7.
- 4.5 Software.** To the extent Vendor provides or delivers any software to the State of Iowa in connection with this Agreement for installation on the State of Iowa servers or personal computers or laptops, the State of Iowa will have a non-exclusive license to use, maintain, modify, copy, distribute and support the software solely in connection with its use of the Services as contemplated hereunder. The State of Iowa shall not disassemble, decompile, or reverse engineer the software or remove any proprietary notices thereon. The software will be deemed part of and included in the definition of the Services.
- 4.6 Third Party Intellectual Property.** Any Third Party Intellectual Property shall be deemed part of and included in the definition of "Services" and subject to all terms and conditions of this Agreement relating to the Services. The State of Iowa shall not be bound by any terms and conditions relating to the Third Party Intellectual Property unless such terms and conditions are expressly identified by Vendor in, and attached to, Exhibit A and agreed to by the State in writing.
- 4.7 Change Orders.** The State of Iowa may submit a Change Order following execution of a Statement of Work to request a modification to any of the Services or Deliverables. If a Change Order does not require Vendor to incur any additional material costs or expenses, then Vendor will make such modification within ten (10) business days of Vendor's receipt of the State of Iowa's Change Order. If a Change Order requires that Vendor incur additional material costs or expenses, then Vendor in good faith will provide the State of Iowa with a written, high level, non-binding assessment of such costs and expenses and the time required to perform the modifications required by the Change Order, within ten (10) business days of Vendor's receipt of the State of Iowa's Change Order. The State of Iowa will notify Vendor in writing within ten (10) business days after receipt of the Change Order response from Vendor as to whether the State of Iowa wishes Vendor to implement such Change Order based on such response. The State of Iowa will compensate Vendor for implementation of an agreed upon Change Order in accordance with the terms and conditions of the relevant Change Order, this Agreement, and Vendor's statement, as provided prior to Vendor's implementation of the Change Order, if any. Vendor's implementation of a Change Order shall not delay the performance of Services and/or the delivery of Deliverables not reasonably affected by a Change Order.
- 4.8 Vendor Personnel.** **Should the State of Iowa be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel assigned by Vendor to perform Professional Services, the State of Iowa may request the replacement of such Vendor Personnel. The replacement request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. In the event Vendor should ever need to remove any Vendor Personnel from performing the Professional Services under this Agreement, Vendor shall provide the State of Iowa with adequate notice, except in circumstances in which such notice is not possible, and shall work with the State of Iowa on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Such transitioning to replacement Vendor Personnel shall be at no additional cost to the State of Iowa. Vendor agrees that all Vendor Personnel assigned to perform Professional Services must have experience performing the tasks to which they will be assigned under this Agreement. In the event that, as a result of the actions, inaction, or replacement of Vendor Personnel, additional or accelerated work is required to perform this Agreement, Vendor shall perform all such work at no additional charge to the State of Iowa.**
- 4.9 Import and Export of Data.** The State of Iowa shall have the ability to import or export data and information (including but not limited to State of Iowa Confidential Information) in whole or in part from the System at its discretion, at no charge to the State, and in such formats as may be acceptable to the State or any State User, without interference from Vendor. This includes the ability for the State of Iowa to import or export such information and data to/from other contractors (including Authorized Contractors). In the event the State of Iowa is unable to successfully import or export data and information in whole or in part from the System, Vendor shall assist the State

of Iowa in doing so upon the State of Iowa's request, at no charge to the State; as it relates to the export of such data and information, Vendor shall provide to or ensure the State of Iowa has obtained an export of the requested data and information within one day of any request in the format specified by the State of Iowa.

## 5. Acceptance

- 5.1 Acceptance Testing.** All Deliverables, unless otherwise agreed by the parties in writing, shall be subject to the State's acceptance testing. Upon completion of all work to be performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to the State of Iowa certifying that the Deliverable meets and conforms to applicable Acceptance Criteria and is ready for the State of Iowa to conduct acceptance tests; provided, however, Vendor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Acceptance Criteria prior to delivering such notice to the State of Iowa. The State of Iowa shall have sixty (60) days, or such additional time as deemed necessary or acceptable by the State of Iowa, to complete its review and testing of any Deliverables submitted for testing by Vendor. Upon the State of Iowa's completion of its review and testing, the State of Iowa shall notify Vendor whether it has accepted such Services and/or Deliverables ("**Accept**"), or whether such Services or Deliverables fail to meet applicable Acceptance Criteria ("**Reject**"). The determination as to whether any Services or Deliverables satisfy any applicable Acceptance Criteria shall be made solely by the State of Iowa. If the State of Iowa Rejects a Service and/or Deliverable, the State of Iowa shall provide a written list of items Vendor must correct to bring the Service and/or Deliverable into conformance with the applicable Acceptance Criteria. On receipt of the State of Iowa's notice, Vendor shall promptly commence, at no additional charge to the State of Iowa, all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the Services and/or Deliverables as will permit them to be ready for retesting; provided, however, that in no event shall such corrective measures exceed ten (10) days from receipt of the State of Iowa's notice. The testing and evaluation process shall resume, as set forth above. If the State of Iowa determines that the Services and/or Deliverables, as revised, still do not comply in all respects with the Acceptance Criteria, the State of Iowa may, at its sole option, either: (a) afford Vendor the opportunity to repeat the correction and modification process as set forth above at no additional cost or charge to the State of Iowa; (b) accept such Service and/or Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the State of Iowa's satisfaction, any reduced value or functionality of such Services and/or Deliverables actually received or delivered as compared against the applicable Acceptance Criteria, or the costs likely to be incurred by the State of Iowa to bring the Services and/or Deliverables actually received or delivered into conformance with the applicable Acceptance Criteria; or (c) depending on the nature and extent of the failure, in the State of Iowa's sole judgment, terminate the relevant Statement(s) of Work or this Agreement and/or seek any and all available remedies, including damages without providing Vendor with any notice or opportunity to cure. The Parties shall repeat the foregoing procedures until the Services and/or Deliverables pass all applicable Acceptance Criteria, or the State of Iowa elects to terminate the Statement(s) of Work or the Agreement as provided above.
- 5.2 Failed Acceptance Testing.** If the State of Iowa terminates a Statement of Work or the Agreement as provided under Section 5.1 (Acceptance Testing), Vendor shall refund or pay to the State of Iowa, within ten (10) business days of written notice of termination, any and all fees, compensation and other amounts previously paid to Vendor by the State of Iowa under this Agreement for all Services and/or Deliverables as to which the termination applies.
- 5.3 No Waiver.** Vendor's receipt of any notice of Acceptance with respect to any Services and/or Deliverables shall not be construed as a waiver of any of the State of Iowa's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or the State of Iowa later discovers a discrepancy between the Acceptance Criteria and the corresponding Services and/or Deliverables actually received or delivered by Vendor to the State.

## 6. Documentation

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

## 7. Support Services

Vendor shall provide the Support Services as follows:

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

- (a) Promptly correct any Error or any failure of the Services or Deliverables to perform in accordance with the Specifications, including without limitation, defect repair, programming corrections, and remedial programming, and provide such services and repairs required to ensure that the Services and Deliverables operate properly and conform to the Specifications on an ongoing basis during the Term of this Agreement;
- (b) Provide telephone support (i) as set forth in Exhibit B, and (ii) to State Users relating to the use and operation of the Services/Deliverables and Error Correction. Such telephone support shall be available twenty-four (24) hours a day, seven (7) days a week. All telephone support shall be accessible to State Users through a toll-free phone number and shall be provided by Vendor from within the continental United States;
- (c) Provide online access to technical support bulletins and other user support information and forums;
- (d) Provide the Support Services in accordance with the service levels set forth in Exhibit C (Service Levels).

Vendor may not provide technical user support on a 24/7 basis using a Follow the Sun model.

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

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

## 8. Term and Termination

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

- (a) Initial Term. The initial term of the Agreement shall begin on the Effective Date and end on the date that is two (2) years after the Effective Date (the "**Initial Term**"), unless terminated earlier in accordance with the terms of this Agreement. The initial term of the license granted pursuant to Section 4.2 of this Agreement shall begin on the later of the date: (a) on which the State provides Vendor with written notice of Acceptance of all Deliverables/System/Application Services provided under the initial Statement of Work, or (b) the date on which the System goes live into production ((a) and (b) shall be referred to collectively herein as "**Go Live**")); provided, however, if it is necessary for State Users to receive, hold, possess, and/or own either all or a portion of the licenses granted pursuant to Section 4.2 for any reason prior to Go Live, Vendor shall grant to State Users the necessary licenses during any such period, at no charge to the State of Iowa.
- (b) Renewal Term(s). After expiration of the Initial Term, the State of Iowa shall have the option to extend/renew the license and this Agreement for up to four (4) additional one-year renewal terms (each a "**Renewal Term**"). Notwithstanding anything in Section 8.1.1 to the contrary, if the State extends/renews the Agreement under this Section, the license granted pursuant to Section 4.2 of this Agreement shall extend/renew coterminous with any subsequent Renewal Term(s). The decision to extend or renew will be at the sole option of the State and may be exercised by the State by providing written notice to Vendor at least thirty (30) days prior to the end of the Initial Term and each Renewal Term.
- (c) Total Term. The Initial Term and any Renewal Terms are referred to herein collectively as the "**Term**." The total length of the Term shall be the sum of the Initial Term and any and all Renewal Terms. Vendor shall provide the State of Iowa with at least ninety (90) days prior written notice of the end of the Initial Term and each Renewal Term.

- 8.2** Bankruptcy. The State of Iowa may, in its sole discretion, terminate this Agreement in the event of the Vendor commencing voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of the Vendor, or upon the Vendor making a general assignment for the benefit of its creditors, or the sale or change of control of Vendor, its business or substantially all its assets.
- 8.3** Default. Each Party shall have the right to terminate this Agreement in the event the other Party breaches any material provision hereof and the other Party fails to cure such breach no later than sixty (60) days after receiving written notice of default from the non-breaching Party. The State's withholding of payment of any compensation or amounts in accordance with the terms of this Agreement shall not be considered a breach of any provision of this Agreement.
- 8.4** Termination for Convenience. The State of Iowa may terminate this Agreement, any Term, or any Statement of Work, Services, or Deliverables immediately upon thirty (30) days written notice to Vendor without reason, penalty or breach of this Agreement, notwithstanding that the Vendor is in compliance with all delivery, performance or other requirements. In the event of any such termination, Vendor shall be compensated for any Services rendered to the State of Iowa's satisfaction and in accordance with the terms of this Agreement prior to the effective date of the termination. Within fifteen (15) days of termination, Vendor shall refund to the State any prepaid fees, compensation, funds other amounts allocated or relating to Services or Deliverables that were not yet to be rendered or provided with regard to any canceled aspect of the Services or Deliverables.
- 8.5** Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the State of Iowa shall have the right to terminate this Agreement without penalty or liability and without any advance notice as a result of any of the following: (a) the legislature or governor fail, in the sole opinion of the State of Iowa, to appropriate funds sufficient to allow the State of Iowa or any State User to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; (b) if funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the State of Iowa or any State User (regardless of the source of funding or revenues) to make any payment hereunder are insufficient or unavailable for any other reason as determined by the State of Iowa in its sole discretion; (c) if the State of Iowa's or any State User's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; (d) if any duties, programs or responsibilities of the State of Iowa, the Iowa Department of Administrative Services, Iowa Department of Education, or any State User are modified or materially altered; (e) if any event or circumstance occurs that impacts or affects the ability of the State of Iowa or any State User or Governmental Entity, to continue to operate, use, maintain or pay for any Services or Deliverables (or any part or component thereof); or (f) if there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the ability of the State of Iowa or any State User to fulfill any of its obligations under this Agreement or the use, operation or maintenance of Services or Deliverables, or any portion or component thereof.
- 8.6** Effect of Termination. Upon termination of this Agreement, unless otherwise specified in this Agreement or by the State of Iowa in writing:
- (a) Vendor shall cease to perform the Services and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the effective date of termination, describing the status of all Services performed and such other matters as the State of Iowa may require.
  - (b) Vendor shall cease using and return to the State of Iowa any materials or property (including State of Iowa Property), whether tangible or intangible, provided by or on behalf of the State of Iowa or any State User to Vendor;
  - (c) Vendor shall immediately return to the State any payments made by the State of Iowa (including pro rata refund(s) of any prepaid subscription fees or license fees and/or any other amounts prepaid by the State of Iowa) for Services or Deliverables that were not rendered or provided by Vendor;
  - (d) Vendor shall perform, comply with and satisfy all duties and obligations as set forth in Sections 4.10 (Import and Export of Data), 8.8 (Transition), 9.8 (Repayment Obligation), 12.9 (Return of Confidential Information), and any other duties or obligations that survive termination or by their nature would be intended to be applicable following any termination, as requested by the State of Iowa.
  - (e) In the event of termination of this Agreement for any reason by either Party (except for termination by the State of Iowa pursuant to Section 8.3 (Default), the State of Iowa shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the State of Iowa (and for Services properly performed in accordance with the terms of this Agreement, prorated as appropriate) up to and including the date of termination of this Agreement and for which the State of Iowa is obligated to pay pursuant to this Agreement; provided however, that in the event the State of Iowa terminates this Agreement



pursuant to Section 8.5 (Termination Due to Lack of Funds or Change in Law), the State of Iowa's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding any provision in this Agreement to the contrary, Vendor shall refund to the State of Iowa, within fifteen (15) days of the effective date of termination for any reason, any prepaid fees, funds or other amounts paid by the State allocated or pertaining to Services that were yet to be rendered with regard to any canceled or terminated aspect of the Services, including but not limited to any prepaid fees for Application Services.

- (f) Notwithstanding the foregoing, this Section 8.6 shall neither be construed as in any way limiting the rights or remedies available to the State of Iowa, nor shall it be construed to require the State of Iowa to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the State of Iowa in accordance with the terms of this Agreement.
- (g) The State of Iowa shall not be liable, under any circumstances, for any of the following: (i) The payment of unemployment compensation to Vendor's employees; (ii) The payment of workers' compensation claims for Vendor's employees, which occur during the Agreement or extend beyond the date on which the Agreement terminates; (iii) Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement; (iv) Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement; (v) Any taxes Vendor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

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

**8.8 Vendor Cooperation/Transition Services.** Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor will continue to perform such Services under this Agreement as the State may request for a transition period up to 365 days from the effective date of termination or expiration of this Agreement. As part of the State's request, the State will inform the Vendor of the number of days during which the Vendor will continue to host and provide access to the Application Services, System, and State of Iowa Confidential Information, and perform transition and other related Services under this Section 8.8 (the "**Transition Period**"). During the Transition Period, Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor will use its best efforts to cooperate with the State and any new contractor of the State, and to fully comply with all requests of the State to effect a smooth and timely transition of Services. Vendor agrees that it will perform all transition Services in good faith and in a professional and businesslike manner, and shall comply with all requests of the State and any new contractor to assist in the effort to accomplish a successful, seamless and unhindered migration of State of Iowa Confidential Information and transfer of Vendor's responsibilities under this Agreement. During the Transition Period, the State agrees to pay to Vendor any fees to which Vendor would be entitled under this Agreement for Services performed during such period; provided this Agreement was not terminated pursuant to Section 8.3 (Default) or 8.5 (Termination Due to Lack of Funds or Change in Law), and Vendor continues to be in full compliance with all terms, conditions, provisions and requirements of this Agreement. In the event the State's request for transition assistance does not require Vendor to continue providing all of the Services under this Agreement or a particular Statement of Work, the parties shall negotiate in good faith an equitable adjustment in the fees which are otherwise payable to Vendor for such Services.

## **9. Fees and Expenses**

**9.1 Fees for Services.** The fees for the Services and/or Deliverables shall be as set forth in Exhibit A (Services; Fees) and in any applicable Statements of Work. A failure of the State of Iowa to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of the Services so long as payment of such undisputed fees is made within the cure period set forth in Section 8.3 (Default). For the avoidance of doubt, in the event of any dispute related to fees, Vendor shall continue to perform and provide the Services until such dispute has been Finally Determined by a court of competent jurisdiction or other agreed-upon governing party. "**Finally Determined**" means when a claim or dispute has been finally determined by a court of competent jurisdiction or other agreed-upon governing party and either (a) no associated appeal has timely been

sought if capable of being sought, or (b) appellate rights properly exercised have otherwise been exhausted. Vendor is not entitled to payment for any Deliverables or Services provided under this Agreement or any Statement of Work if the State reasonably determines that such Deliverables or Services have not been satisfactorily or completely delivered or performed, or that such Deliverables or Services fails to meet or conform to any applicable Acceptance Criteria or Specifications or that there is a material Error with respect to such Deliverable or Services. No payment, including final payment, shall be construed as acceptance of any Deliverables with Errors or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement.

- 9.2** Invoices. Unless provided otherwise in Exhibit A (Services; Fees), Vendor will invoice the State of Iowa for Application Services on a monthly basis. With respect to Deliverables and Services provided under a Statement of Work, Vendor shall invoice the State for those Services or Deliverables that have been accepted by the State upon Vendor's receipt of the State's written notice of Acceptance for such Deliverables or Services, with such invoice reflecting the fees applicable to such accepted Deliverables or Services consistent with the fees specified in the applicable Statement of Work. All invoices submitted by Vendor shall comply with all applicable laws, rules, and regulations (including any applicable federal laws, rules, or requirements) concerning payment of such fees, charges, or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the State of Iowa. Each invoice shall fairly and accurately describe in reasonable detail the actual Services performed and any Deliverables provided, and the fees payable by the State of Iowa for such Services and Deliverables. The State of Iowa shall not be required to make payment on any invoices if such documentation is not furnished by Vendor as herein provided, or if any invoices with respect to the same is rendered more than ninety (90) days after the expenses were incurred, and Vendor shall be solely and exclusively responsible for payment of same at its own cost and expense. The State of Iowa may refuse payment with respect to any invoice that fails to comply with the requirements contained in this Section 9.2 (Invoices). Notwithstanding anything herein to the contrary, the State of Iowa shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the State of Iowa believes the invoice is inaccurate or incorrect in any way.
- 9.3** Payment Terms. Except for payments identified as prepayment agreed to by the State for Services and/or Deliverables, the State of Iowa shall pay all undisputed amounts set forth in approved invoices in arrears and in conformance with Iowa Code Section 8A.514 and 11 Iowa Admin. Code 41.1(2). The State of Iowa may pay in less than sixty (60) days, as provided in Iowa Code Section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code Section 8A.514.
- 9.4** Payment Does Not Imply Acceptance. The making of any payment or payments by the State of Iowa, or the receipt thereof by Vendor, shall in no way affect the responsibility of Vendor to furnish the Services and Deliverables in accordance with this Agreement, and shall not imply acceptance by the State of Iowa of such Services or Deliverables or the waiver of any warranties or requirements of this Agreement.
- 9.5** Erroneous Payments and Credits. Except for payments identified as prepayment for Services and/or Deliverables, Vendor shall promptly pay or refund to the State of Iowa the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the State of Iowa of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the State of Iowa under this Section 9.5, the State of Iowa will charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The State of Iowa may, in its sole discretion, elect to have Vendor apply any amounts due to the State of Iowa under this Section 9.5 against any amounts payable by the State of Iowa under this Agreement.
- 9.6** Repayment Obligation. In the event that any State of Iowa and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Vendor will be liable to the State of Iowa (or any other applicable Governmental Entity) for the full amount of any claim disallowed (or the amount of funds expended in violation of such applicable laws) and for all related penalties incurred. If the State of Iowa or any federal agency concludes that Vendor has been paid for any cost that is unallowable, unallocable, or unreasonable under this Agreement, Vendor will be liable to the State of Iowa for such cost. The Vendor shall pay to the State of Iowa all amounts for which the Vendor is liable under this Section within ten (10) business days of receiving the State of Iowa written demand or written notice. The State of Iowa may withhold any payment under this Agreement if Vendor fails to timely make any payment required by this Section. The requirements of this Section shall apply to the Vendor, its affiliate and subcontractors.
- 9.7** Prepayment. Notwithstanding anything in this Agreement to the contrary, the State of Iowa may, at its sole discretion, elect to prepay fees for the Services and/or Deliverables in accordance with applicable laws, rules and procedures.
- 9.8** Responsibility for Costs. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this Section 9. Vendor shall be solely responsible for all costs, charges and expenses it

incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.

- 9.9** Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in connection with the performance of this Agreement or the provision of Services and Deliverables. The State of Iowa is exempt from the payment of sales and all other taxes.
- 9.10** All Fees Stated. Except as provided in this Section 9 (Fees and Expenses), as specifically stated in Exhibit A or any Statement of Work, or otherwise agreed pursuant to a valid amendment to or modification of this Agreement, there are no other fees or other amounts to be paid by the State of Iowa in connection with this Agreement for the Services and/or Deliverables. Any work performed by Vendor and not specifically authorized by the State of Iowa in writing shall be considered gratuitous and Vendor shall have no right or claim whatsoever to any form of compensation.
- 9.11** Set-off Against Sums Owed by Vendor. In the event that Vendor owes the State of Iowa or any Governmental Entity any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the State of Iowa or the Governmental Entity may set off such sum against any sum invoiced to the State of Iowa by Vendor in the State of Iowa's sole discretion unless otherwise required by law. Any amounts due to the State of Iowa as damages may be deducted by the State of Iowa from any money or sum payable by the State of Iowa to Vendor pursuant to this Agreement or any other agreement between Vendor and the State of Iowa. The State of Iowa's exercise of rights under this Section 9.11 shall not be considered a breach of this Agreement by the State of Iowa.
- 9.12** Withhold Remedy. In addition to, and cumulative to all other remedies in law, at equity and provided under this Agreement, in the event Vendor is in material default of its duties or obligations under this Agreement and it fails to cure the default within fifteen (15) days after receipt of written notice of default from the State of Iowa, the State of Iowa may, without waiving any other rights under this Agreement, elect to withhold from the payments due to Vendor under this Agreement during the period beginning with the 16th day after Vendor's receipt of notice of default, and ending on the date that the default has been cured to the reasonable satisfaction of the State of Iowa, an amount that is in proportion to the magnitude of the default or the service that Vendor is not providing, as determined in the State of Iowa's reasonable discretion. Upon curing of the default by Vendor, the State of Iowa will cause the withheld payments to be paid to Vendor, without interest. In addition to the foregoing, the State of Iowa may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the State of Iowa or work stoppage by Vendor, in the event the State of Iowa determines that any Service or Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing an Error. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the State of Iowa under this Agreement. The State of Iowa's exercise of its rights to withhold payments shall not be considered a breach of this Agreement by the State of Iowa.
- 9.13** Audits and Records. During the Term and for a period of five (5) years thereafter, Vendor shall maintain accurate, current and complete books, documents and records that sufficiently and properly document Vendor's performance and provision of Services and other Deliverables under this Agreement, including all records that document all fees and other amounts charged during the Term. If any litigation, claim, negotiation, audit or other action involving the books, documents and records has been started before the expiration of the five-year period, Vendor must retain the records until completion of the action and resolution of all issues which arise from it, or until the end of the above-described five (5) year period, whichever is later. Vendor shall permit the State of Iowa, the Auditor of the State of Iowa, or any authorized representative of the State of Iowa, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, and records, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement, wherever located. At the request of the State of Iowa, Vendor shall deliver and provide, at no charge, complete copies of such books, documents and records to the State of Iowa or its designee in such formats and within such time period as may be specified by the State of Iowa in its request. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit, examination or delivery of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section. Based on the audit findings, the State of Iowa reserves the right to address Vendor's board or other managing entity regarding performance and expenditures. For the Term of this Agreement, upon the State of Iowa's written request, Vendor shall provide the State of Iowa with a copy of its most recent annual American Institute of Certified Public Accountants SSAE 16 Service Organization Control (SOC) 1 type 2 report. If and to the extent state or federal law or the terms of this Agreement require compliance with the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards codified at 2 C.F.R. § 200.1-521 or other similar provisions

addressing proper use of government funds, Vendor shall comply with the following additional records retention and access requirements:

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

## 10. Representations, Warranties and Covenants

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

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

**10.3 Compliance with Applicable Laws.** Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws relating to privacy and information security, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and

health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Iowa Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Iowa Department of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Vendor shall make the provisions of this Section 10.3 a part of its contracts with any subcontractors providing goods or services related to Vendor's performance of this Agreement. Vendor further represents, warrants and covenants that the Services and Deliverables comply with and will at all times comply with the State of Iowa Website Accessibility Standard (available at <https://ocio.iowa.gov/standards>) and including Section 508 of the Rehabilitation Act of 1973, as amended, all standards and requirements established by the Architectural and Transportation Barriers Access Board, and the World Wide Web (W3C) Web Accessibility Initiative. Without limiting the foregoing, Vendor covenants that the Application Services will pass W3C validation and meet the accessibility standards of 36 C.F.R. § 1194, which implements Section 508 of the Rehabilitation Act of 1973. Vendor further represents, warrants and covenants that the Services and Deliverables comply with, and will at all times comply with during the Term of this Agreement shall comply with, all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders. Vendor represents, warrants and covenants that during the Term, the State's and State Users' use of the Services and Deliverables provided hereunder will not violate any applicable federal, state, and local laws, rules, ordinances, codes, regulations and orders. Notwithstanding any provision in this Agreement to the contrary, to the extent that Vendor fails to meet or otherwise breaches any of its duties or obligations under this Section 10.3, it shall be liable and responsible for any fines, penalties, taxes, fees, damages, costs, expenses, or other amounts assessed to, imposed against or otherwise incurred by the State of Iowa or any State Governmental Entity, and the State may consider any such failure or breach to be material breach of this Agreement.

**10.4** HIPAA Compliance Warranty. Vendor represents, warrants, and covenants that the Services to be provided hereunder shall comply with, and shall enable the State to at all times comply with, all applicable rules, regulations and accreditation standards or requirements of: Medicare or Medicaid or other federal or state health programs, the Joint Commission on Accreditation of Healthcare Organizations; HIPAA; the National Committee for Quality Assurance; updates to incorporate any changes to such laws, rules, regulations, requirements and standards; and the terms and conditions set forth in any Business Associate Agreement(s).

## **11. Intellectual Property**

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

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

## **12. Confidentiality**

**12.1** No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor shall not make any media release or other public announcement relating to or referring to this Agreement without the State of Iowa's prior written consent. Vendor shall acquire no right to use, and shall not use, without the State of Iowa's prior written consent, the terms of this Agreement or any Statement of Work, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the State of Iowa or any Governmental Entity, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity,

press release, customer list, presentation or promotion; (b) to express or to imply any endorsement of Vendor or Vendor's services by the State of Iowa; or (c) in any manner other than expressly in accordance with this Agreement.

**12.2** Exclusions. Neither Confidential Information nor State of Iowa Confidential Information includes any information that: (a) was rightfully in the possession of the receiving Party from a source other than the disclosing Party prior to the time of disclosure of the information by the disclosing Party to the receiving Party; (b) was known to the receiving Party prior to the disclosure of the information by the disclosing Party only if evidenced by written records kept in the ordinary course of business or by proof of actual use by the receiving Party; (c) was disclosed to the receiving Party without restriction by an independent third party having a legal right to disclose the information; (d) is in the public domain or shall have become publicly available other than as a result of disclosure by the receiving Party in violation of this Agreement or in breach of any other agreement with the disclosing Party; (e) is independently developed by the receiving Party without any reliance on Confidential Information disclosed by the disclosing Party; (f) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (g) is disclosed by the receiving Party with the written consent of the disclosing Party. It will be presumed that any Confidential Information in a receiving Party's possession is not within exceptions (a), (b), (c), or (e) above, and the burden will be upon the receiving Party to prove otherwise by records and documentation. Notwithstanding the foregoing, exclusion (d) shall not apply to State of Iowa Confidential Information.

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

**12.4** The State of Iowa's Treatment of Confidential Information. Except as provided or contemplated herein, and subject to applicable state, federal, and/or international laws, rules or regulations (including, without limitation, Iowa Code Chapter 22, Iowa Administrative Code 645-10, and any other applicable administrative rules adopted by the State of Iowa), the State of Iowa shall not intentionally disclose Vendor's Confidential Information to a third party (excluding State Users, Governmental Entities and Authorized Contractors) without the prior written consent of Vendor. Notwithstanding the foregoing, the State of Iowa may disclose Vendor's Confidential Information: (a) pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative or regulatory processes; (b) pursuant to any applicable laws, rules, or regulations; (c) if the State of Iowa determines that such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules and regulations; or (iv) if the State of Iowa determines Vendor has not provided or is unwilling to provide facts sufficient to enable the State of Iowa to make a determination whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rules and regulations. In such event, the State of Iowa shall provide prompt notice to

Vendor of the circumstances giving rise to the State of Iowa's disclosure. Vendor acknowledges that the State of Iowa is subject to and required to comply with Iowa Code Chapter 22 and other laws, rules and regulations governing public records. If a request is made to view or otherwise access Vendor's Confidential Information pursuant to such laws, rules or regulations, the State of Iowa will promptly notify Vendor of the request.

- 12.5** Treatment of Personal Data. Without limiting any other warranty or obligation specified in this Agreement, and in particular the confidentiality provisions of this Section 12 (Confidentiality), during the Term and thereafter in perpetuity, Vendor will not gather, store, log, archive, use or otherwise retain any Personal Data in any manner and will not disclose, distribute, sell, share, rent or otherwise transfer any Personal Data to any third party, except as expressly required to perform its obligations in this Agreement or as Vendor may be expressly directed in advance in writing by the State of Iowa. Vendor represents and warrants that Vendor will use Personal Data only in compliance with (a) this Agreement, (b) the State of Iowa's then-current applicable privacy notice, and (c) all applicable local, state, and federal laws and regulations, including but not limited to Iowa Code chapter 715C and the other laws listed Section 1.22 of this Agreement, and all other current and future laws and regulations relating to spamming, privacy, data protection, and consumer protection.
- 12.6** Retention of Personal Data. Vendor will not retain any Personal Data for any period longer than necessary for Vendor to fulfill its obligations under this Agreement. As soon as Vendor no longer needs to retain such Personal Data in order to perform its duties under this Agreement, Vendor will, at the State of Iowa's request, promptly return, destroy or erase all originals and all copies of such Personal Data.
- 12.7** Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over Vendor, Vendor may disclose State of Iowa Confidential Information in accordance with such law or order or requirement, subject to the following conditions: as soon as possible after becoming aware of such law, order or requirement and prior to disclosing such Confidential Information pursuant thereto, Vendor will so notify the State of Iowa in writing and provide the State of Iowa notice not less than five (5) business days prior to the required disclosure. Vendor will use reasonable efforts not to release State of Iowa Confidential Information pending the outcome of any measures taken by the State of Iowa to contest, otherwise oppose or seek to limit such disclosure by the Vendor and any subsequent disclosure or use of State of Iowa Confidential Information that may result from such disclosure. Vendor will cooperate with and provide assistance to the State of Iowa regarding such measures. Notwithstanding any such compelled disclosure by the Vendor, such compelled disclosure will not otherwise affect Vendor's obligations hereunder with respect to State of Iowa Confidential Information so disclosed.
- 12.8** Return of Confidential Information. On the State of Iowa's written request or upon expiration or termination of this Agreement for any reason, the Vendor will promptly: (a) return or destroy, at the State of Iowa's option, all State of Iowa Confidential Information, whether in written or in machine-readable form, including without limitation, all originals and copies of all documents and materials it has received containing the State of Iowa's Confidential Information; and (b) deliver or destroy, at the State of Iowa's option, all originals and copies of all summaries, records, descriptions, modifications, compilations, negatives, drawings, adaptations and other documents or materials, whether in written or in machine-readable form, prepared by Vendor, prepared under its direction, or at its request from the documents, materials, data, or information referred to in subparagraph (a), and provide a notarized written statement to the State of Iowa certifying that all documents and materials referred to in subparagraphs (a) and (b) have been delivered to the State of Iowa or destroyed, as requested by the State of Iowa. To the extent Vendor is required to destroy any documents, materials, data, or information pursuant to subparagraphs (a) and (b), above, such documents, materials, data, or information shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. On termination or expiration of this Agreement, the State of Iowa shall, except to the extent otherwise required by applicable laws, rules, procedures or State record retention requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items subject to any continuing licenses to the State of Iowa hereunder or that are required for use of the Deliverables).
- 12.9** Open Records and Electronic Discovery Requests and Record Retention. Vendor will, upon the State of Iowa's request and within any time period specified by the State of Iowa, take all actions requested by State of Iowa to assist the State of Iowa in complying timely with any request for records, data, or information or materials of any kind that may be made by any person or entity in accordance with applicable public or open records laws (including, without limitation, Iowa Code Chapter 22) or in connection with any subpoena, court order, discovery request, regulatory or criminal investigation or proceeding, or any other matter that may require the State of Iowa to produce or provide data, records, or information of any kind to a third party. Vendor will produce and provide all data, records, information or materials of any kind within the time period set forth in State of Iowa's written request. Vendor will take all steps necessary to ensure that all data and records will be stored and maintained in their original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon

State of Iowa's request, take all actions requested by State of Iowa to assist the State of Iowa in complying with any state or federal record retention requirements, policies, procedures or any requirements of any United States Governmental Entities.

- 12.10 Discovery Requests and Court Orders.** In the event that either Party or its service providers or contractors or subcontractors receive a request to disclose all or any part of the State of Iowa's Confidential Information under the terms of a subpoena or order or demand issued by a court or a Governmental Entity, the relevant or receiving Party agrees: (i) to notify the other Party immediately of the existence, terms, and circumstances surrounding such request, (ii) to consult with the other Party on the advisability of taking legally-available steps to resist or narrow such request and to cooperate with the other Party in relation to any such steps, and (iii) to furnish only such portion of State of Iowa's Confidential Information or information as it is legally compelled to disclose and to exercise reasonable best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to State of Iowa's Confidential Information.
- 12.11 Non-Exclusive Equitable Remedy.** Each Party acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or third parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party may be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section 12 (Confidentiality) will constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement in the exclusive discretion of the non-breaching Party.
- 12.12 Business Associate and Non-Disclosure Agreements.** Vendor will execute any Business Associate Agreement(s), which shall be attached as an Exhibit E, or Non-Disclosure Agreement(s) required by the State, or any Governmental Entity, State User, User or other entity that requests Vendor to sign its form Business Associate Agreement or Non-Disclosure Agreement in connection with this Agreement or any related agreement.
- 12.13 Non-disclosure and Separation of Duties.** Vendor shall require its staff to sign non-disclosure agreements regarding State of Iowa Confidential Information and shall limit staff knowledge of State of Iowa Confidential Information to that which is absolutely necessary to perform job duties.

### **13. Security**

- 13.1 Compliance.** Vendor and Vendor's subcontractors shall comply with state and federal data security and privacy statutes, regulations, rules, and other laws relating to data security and privacy. Vendor further represents, warrants, and covenants that Vendor and its personnel and subcontractors will ensure that the Services and Deliverables (including the System and Application Services), will at all times comply with all applicable state and federal IT standards, policies and guidelines, including, but not limited to those relating to security, internet and the web, data backup, and the standards and controls provided at:
- NIST 800-53, Revision 4 controls - <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>;
  - ISO/IEC 27001:2013 - [http://www.iso.org/iso/catalogue\\_detail?csnumber=54534](http://www.iso.org/iso/catalogue_detail?csnumber=54534);
  - <https://secureonline.iowa.gov/laws-rules-and-standards>.

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

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

Vendor acknowledges and agrees that it will be subject to and bound by all of the terms and provisions set forth in this Section 13 and shall require and, to the extent applicable, cause any subcontractor used by Vendor in connection with this Agreement to agree to be subject to and bound by all of the foregoing. In addition, Vendor and its personnel and subcontractors will ensure that all networks, servers, computer systems, hardware, IT infrastructure



and other hardware on which the Services are hosted, installed, operated, processed, stored or otherwise located, comply with all such State of Iowa and federal IT laws, rules, regulations, standards, policies and guidelines, and all of the other standards and controls noted above.

- 13.2** Reporting. Vendor will notify the State of Iowa within two (2) hours of Vendor's discovery of any actual or suspected breach of confidentiality, privacy or security (or any unauthorized access) with regard to any State of Iowa Confidential Information, and/or any breach of Vendor's or the State of Iowa's data security procedures, which includes, but is not limited to, instances in which internal personnel access systems in excess of their user rights or use the systems inappropriately, any Breach of Security as defined in Iowa Code Chapter 715C, any Breach of Unsecured PHI as defined by HIPAA, and any other breach of security or privacy as defined by any applicable law, rule, or regulation including, without limitation, the laws listed in Section 1.22 of this Agreement. Such notification to the State must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent within forty-eight (48) hours of discovery or notification of the breach or suspected breach.
- 13.3** Investigations and Remedies. In addition to Vendor's other obligations under this Agreement, or under any law or regulation, Vendor agrees, at its sole expense, to take all steps necessary to promptly remedy any breach described in Section 13.2 and to fully cooperate with the State of Iowa in resolving such breach and mitigating any damage from such breach at Vendor's sole cost. At no additional cost to the State, Vendor will fully cooperate with the State of Iowa in investigating the breach, including, but not limited to, providing to the State and assisting the State in reviewing system, application, and access logs, conducting forensic audits of relevant systems, imaging relevant media, and making personnel available for interview. On notice of any actual or suspected breach, Vendor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to the breach in accordance with industry best practices. Vendor will deliver to the State of Iowa a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting State of Iowa Property, including State of Iowa Confidential Information. Vendor will deliver a preliminary assessment and plan as soon as practical, and regularly maintain and update such assessment and plan throughout the course of any investigation based on any findings. Vendor agrees that it will not notify any regulatory authority or any User relating to any such security breach on behalf of the State of Iowa unless the State of Iowa specifically requests in writing that Vendor do so. Vendor and the State of Iowa will work together to formulate a plan to rectify all security breaches.
- 13.4** Additional Procedures in the Event of Privacy or Security Breach. Upon the State of Iowa's determination that a breach of security including but not limited to any Breach of Security as defined in Iowa Code Chapter 715C, any Breach of Unsecured PHI as defined by HIPAA, and any other breach of security or privacy as defined by any other applicable law, rule, or regulation including, without limitation, the laws listed in Section 1.22 of this Agreement, involving or relating to any State of Iowa Confidential Information has occurred or is reasonably possible, Vendor shall fully cooperate with the State of Iowa in rectifying any breach or misuse, including notifying all of the State of Iowa's affected Users. The State of Iowa shall determine, in its sole discretion, the content and means of delivery of the User notice. Notwithstanding any provision in this Agreement to the contrary, Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees and any and all other amounts of any kind or nature whatsoever (including, without limitation, the reasonable value of time of the Iowa Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) related to, arising out of or incurred by or on behalf of the State of Iowa as a result of, any privacy or security breach caused directly or indirectly, in whole or in part, by Vendor, its affiliates, employees, or subcontractors, including, but not limited to, the costs of notifications of affected individuals and businesses and any applicable regulators or governmental entities (including, preparation, printing, mailing and delivery); the costs of forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for affected individuals; the costs of obtaining credit monitoring services and identity theft insurance for any person or entity whose Personal Data has or may have been acquired or compromised; and all other costs associated with corrective or other actions that are taken to mitigate or address the security breach. Vendor will reimburse or pay to the State of Iowa all such expenses, fees, damages and all other amounts within fifteen (15) business days of the date of any written demand or request delivered by the State of Iowa to Vendor.
- 13.5** Security Audits by the State of Iowa. During the Term, the State of Iowa or its third party designee may, but is not obligated to, perform audits of Vendor's environment, including unannounced penetration and security tests, as it relates to the receipt, maintenance, use or retention of the State of Iowa's Confidential Information. Any of the State of Iowa's regulators (and any federal agencies providing grant funds used to pay for Services, in whole or in part) shall have the same right upon request. Vendor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.
- 13.6** Security Testing; Compliance Audits. Vendor will periodically test its systems for potential areas where security could be breached. During the Term, to the extent Vendor engages a third party auditor to perform an SSAE 16 of Vendor's operations, information security program, and/or disaster recovery/business continuity plan, Vendor shall promptly

furnish a copy of the test report or audit report to the State of Iowa. In addition, Vendor shall disclose its non-proprietary security processes and technical limitations to the State of Iowa, such that adequate protection and flexibility can be attained between the State of Iowa and Vendor. For example, Vendor shall disclose its security processes with respect to virus checking and port sniffing to the State of Iowa such that the State of Iowa is capable of identifying necessary compensating controls to adequately safeguard and protect its data, information, and systems.

- 13.7 Data Ownership.** All data, including all State of Iowa Confidential Information, obtained by Vendor in the performance of or during the Term of this Agreement shall be and remain the sole and exclusive property of the State of Iowa, including without limitation all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State of Iowa, any Governmental Entity or any User (including but not limited to by or through Vendor on behalf of the State of Iowa, any Governmental Entity, or any User, or in any way related to the State of Iowa's, any Governmental Entity's or any User's use of the System or Application Services).
- 13.8 Data Protection.** Protection of personal privacy and data shall be an integral part of the business activities of Vendor to ensure there is no inappropriate or unauthorized use of the State of Iowa's Confidential Information at any time. To this end, Vendor shall safeguard the confidentiality, integrity and availability of the State of Iowa's Confidential Information. In so doing, Vendor shall comply with the following conditions:
- (a) Vendor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of State of Iowa Confidential Information. Such security measures shall be in accordance with recognized industry practice (including, NIST 800-53 Revision 4 and ISO27001:2013 standards and controls) and not less stringent than the measures the Vendor applies to its own personal data and non-public data of similar kind. Additionally, such securities measures, to the extent applicable, shall comply with, and shall enable the State to at all time comply fully with, all applicable federal, state, and local laws, rules, ordinances, codes, regulations and orders related to such security measures or other data security or safeguarding requirements, including but not limited to any Breach of Security as defined in Iowa Code Chapter 715C, any Breach of Unsecured PHI as defined by HIPAA, and any other breach of security or privacy as defined by any applicable law, rule, or regulation including, without limitation, the laws listed in Section 1.22 of this Agreement.
  - (b) All State of Iowa Confidential Information shall be encrypted at rest and in transit with controlled access. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor is responsible for encryption of all State of Iowa Confidential Information. Additionally, Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Personal Data, unless the State of Iowa approves in writing the storage of Personal Data on a Vendor portable device.
  - (c) At no time shall any State of Iowa Confidential Information be copied, disclosed or retained by Vendor, any subcontractor, or any party related to Vendor for subsequent use in any transaction that does not include the State of Iowa.
  - (f) **Vendor shall not use any State of Iowa Confidential Information collected, processed, stored or transmitted in connection with the Services provided under this Agreement for any purpose other than fulfilling Vendor's express obligations and duties under this Agreement.**
- 13.9 Data Location.** Vendor shall provide Services to the State of Iowa, Governmental Entities, and Users solely from data centers located in the continental United States of America. Storage of State of Iowa Confidential Information, or any other State data, at rest and all backups shall be located solely in data centers located in the continental United States of America. Vendor shall not allow its personnel or subcontractors to store State of Iowa Confidential Information or any data on any portable devices, including personal computers, tablets, or cell phones, except for devices that are used and permanently stored at all times only at its continental United States of America data centers. Vendor shall permit its personnel and subcontractors to access State of Iowa Confidential Information remotely only as required to provide technical support.
- 13.10 Background Checks.** Vendor shall conduct nationwide criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of this Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. Vendor shall promote and maintain an awareness of the importance of securing the State of Iowa Confidential Information among the Vendor's employees, affiliates, subcontractors, and agents.
- 13.11 Access to Security Logs and Reports.** Vendor shall provide security logs and reports to the State of Iowa in a mutually agreeable format. Such reports shall include at least latency statistics, user access summaries, user access IP address summaries, user access history and security logs for all State of Iowa files related to this Agreement.

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

#### 14. Disaster Recovery/Business Continuity/Data Backup/Loss of Data

14.1 Creation, Maintenance and Testing. Vendor shall maintain a Business Continuity and Disaster Recovery Plan for the Services (the "Plan"), and implement such plan in the event of any unplanned interruption of the Services. On or before the Effective Date, Vendor shall provide the State of Iowa with a copy of Vendor's current Plan, revision history, and any reports or summaries relating to past testing of the Plan. Vendor shall actively test, review, and update the Plan on at least an annual basis using American Institute of Certified Public Accountants standards and other industry best practices as guidance. Vendor shall promptly provide the State of Iowa with copies of all reports and/or summaries resulting from any testing of the Plan and with copies of all such updates to the Plan. All updates shall be subject to the requirements of this Section 14 (Disaster Recovery/Business Continuity). Any future updates or revisions to the Plan shall be no less protective than the plan in effect as of the Effective Date. Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard the State of Iowa's Confidential Information and the data processing capability and availability of the Services. Additional disaster recovery/business continuity requirements may be set forth in individual Statement(s) of Work.

14.2 Activation of Plan. Vendor shall immediately notify the State of Iowa of any disaster or other event in which the Plan is activated. If Vendor fails to reinstate the Services within the periods of time set forth in the Plan, the State of Iowa may in addition to any other remedies available hereunder, in its sole discretion, immediately terminate this Agreement as a non-curable default under Section 8.3 (Default). Without limiting Vendor's obligations under this Agreement, whenever a disaster causes Vendor to allocate limited resources between or among Vendor's customers, the State of Iowa shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 19.5 (Force Majeure) shall not limit Vendor's obligations under this Section 14 (Disaster Recovery/Business Continuity). Further, nothing in this Section 14 shall be construed as in any way limiting: Vendor's obligations elsewhere in this Agreement, including but not limited to any applicable service levels as set forth in Exhibit C; or any rights or remedies available to the State of Iowa.

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

14.4 Loss of Data. In the event of any act, error or omission, negligence, or misconduct that compromises or is suspected to compromise the security, confidentiality, or integrity of State of Iowa Confidential Information or the physical, technical, administrative, or organizational safeguards put in place by Vendor or any of its Subcontractors related to the protection of the security, confidentiality, or integrity of State of Iowa Confidential Information, Vendor shall, in addition to any other remedies available pursuant to this Agreement, or otherwise available at law or in equity, to the extent applicable: (a) notify the State of Iowa as soon as practicable but no later than two (2) hours of becoming aware of such occurrence; (b) send the State of Iowa written confirmation within forty-eight (48) hours of discovery or notification of the occurrence; (c) cooperate with State of Iowa in investigating the occurrence, including, but not limited to providing to the State and assisting the State in reviewing system, application, and access logs, conducting forensic audits of relevant systems, imaging relevant media, and making personnel available for interview; (d) indemnify and hold harmless the State of Iowa, State Users, Governmental Entities, and their employees, officers, board members, agents, representatives, and officials from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and expenses (including, without limitation, the reasonable value of time of the Iowa Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of such occurrence; (e) be responsible for recreating lost State of Iowa Confidential Information in the manner and on the schedule specified by the State of Iowa without charge to the State of Iowa; and, (g) provide to the State of Iowa a detailed plan within ten (10) calendar days of the occurrence describing the measures Vendor will undertake to prevent a future occurrence.

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

## 15. Indemnification

- 15.1 Indemnification.** Vendor and its successors and permitted assigns shall indemnify and hold harmless the State of Iowa, Governmental Entities, and their employees, officers, board members, agents, representatives, and officials (“**Indemnitees**”) from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and expenses (including, without limitation, the reasonable value of time of the Iowa Attorney General’s Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) directly or indirectly related to, resulting from, or arising out of this Agreement, including, but not limited to, any claims related to, resulting from, or arising out of: (i) any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading; (ii) any action, inaction, negligence or willful misconduct of Vendor that causes any injury to any person or persons or damage to tangible or intangible property; (iii) any failure by Vendor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, and federal laws, rules, ordinances and regulations, including, without limitation, Iowa Code Chapter 715C, HIPAA, the laws listed in Section 1.22 of this Agreement, and those relating to Personal Data; (iv) any action or inaction by Vendor or its employees, agents, officers, directors, affiliates, contractors or subcontractors, or any failure of the Services or the System that causes or contributes to any failure of the State of Iowa or any Indemnatee to comply with Iowa Code Chapter 715C, HIPAA, any other breach of security or privacy as defined by any applicable law, rule, or regulation including, without limitation, the laws listed in Section 1.22 of this Agreement, and any other legal or regulatory requirements with which the System or the Services are or may be designed or intended to facilitate compliance; (v) any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker’s compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State; (vi) any breach (or threatened or claimed breach) of security or other incident affecting any State of Iowa Confidential Information, the System or the Services, or any other event involving unauthorized access to or use of any State of Iowa Confidential Information, the System or the Services; (vii) any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including, without limitation, any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation or security; and/or (viii) any claim that the State of Iowa’s authorized use of any Services and/or Deliverables (collectively, the “**Indemnified Items**”) infringe any third party’s patent, copyright, trade secret or other intellectual property rights (collectively, “**Claim(s)**”), including the payment of all amounts that a court or arbitrator awards or any settlement amounts relating to any Claim(s) as well as any and all reasonable expenses or charges as they are incurred by the State of Iowa or any other party indemnified under this Section 15.
- 15.2 Infringement Claim Additional Remedy.** If the Indemnified Items, or any portion of them, become or are likely to become the subject of an infringement Claim as provided in Section 15.1(viii), then, in addition to paying any damages and attorney fees as required above, Vendor shall, at its option, either (a) immediately replace or modify the Indemnified Items, without loss of material functionality or performance, to make them non-infringing, or (b) immediately procure for the State of Iowa the right to continue using the Indemnified Items pursuant to this Agreement. Any costs associated with implementing either of the above alternatives will be borne by Vendor. If Vendor fails to provide one of the foregoing remedies within forty-five (45) days of notice of the infringement Claim, in addition to any other remedies available to the State of Iowa available under this Agreement, at law, or in equity, the State of Iowa shall have the right, at its sole option, to terminate this Agreement and/or the applicable Statement of Work and have Vendor refund to the State of Iowa all associated fees, compensation or other amounts paid by the State of Iowa.
- 15.3 Claims.** Vendor’s obligations under this Section 15 (Indemnification) are not limited to third-party claims but shall also apply to first-party claims by the State of Iowa against Vendor.
- 15.4 Survival of Duties.** Vendor’s duties as set forth in this Section 15 shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the State or any other Indemnatee.

## 16. Limitation of Liability

Except as otherwise set forth herein, and only to the extent permitted by and not prohibited by applicable laws, rules and regulations: the maximum liability of either Party under this Agreement shall be five (5) times the Contract Value (Contract Value is defined as the aggregate total compensation to be paid by the State of Iowa to the Vendor under the entire term of the Agreement, including all renewals and extensions); provided, however, under no circumstances shall the foregoing

limitation apply to any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:

- 16.1 Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or the negligence, or bad faith of Vendor, its officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors;
- 16.2 Death, bodily injury, security breaches or unauthorized access affecting State of Iowa Confidential Information (including Personal Data), or damage to real or personal property;
- 16.3 Any contractual obligations of Vendor pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws, including but not limited to any laws related to data security and privacy, Personal Data, or confidential information; data security or breach of security, including but not limited to breach/notification, disaster recovery; return/migration of data;
- 16.4 Any claims arising under provisions of the Agreement calling for indemnification of the State of Iowa or any Indemnitee for third-party claims against the State of Iowa for bodily injury to persons or for damage to real or tangible personal property caused by the Vendor's negligence or willful conduct;
- 16.5 Corruption or loss of data/information; loss of revenue or inability to collect revenue; inability to process or pay claims or to make any other payments; system downtime or loss of use (including failure to meet service levels as set forth in Exhibit C).

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

## 17. Insurance

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

## 18. Management and Control; Reporting

18.1 Vendor Manager. Vendor shall assign a manager ("**Vendor Manager**") to manage Vendor's performance of the Services. The Vendor Manager shall be responsible for Vendor's day-to-day activities under this Agreement and for providing the State of Iowa reports as provided in Section 18.2 (Reports) or elsewhere in this Agreement. The Vendor Manager shall also serve as Vendor's liaison with the State of Iowa, assign and schedule Vendor Personnel to perform all of the Services required by Vendor under this Agreement, and act as Vendor's initial representative for dispute resolution. Any change of the Vendor Manager shall be subject to the State of Iowa's prior approval, which approval shall not be unreasonably withheld or delayed.

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

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

18.3 Problem Reporting Omissions. The State of Iowa's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that the State of Iowa may have. The State of Iowa's failure to identify the extent of a problem or discrepancy with Specifications, or the extent of damages incurred as a result of a problem or discrepancy with Specifications, shall not act as a waiver of performance under this Agreement.

- 18.4 State of Iowa Manager.** The State of Iowa shall assign a manager (“**State of Iowa Manager**”) who will be responsible for the State of Iowa’s day-to-day activities with respect to such project under this Agreement. The State of Iowa Manager shall serve as the State of Iowa’s initial representative for dispute resolution. The State of Iowa Manager shall respond to the Vendor Manager’s reports to the extent that a response is appropriate as determined by the State of Iowa Manager. All Services provided by Vendor hereunder shall be subject to approval by the State of Iowa Manager. Any change of the State of Iowa Manager shall be in the State of Iowa’s sole discretion; provided the State of Iowa shall notify Vendor in writing of any change. The State of Iowa Manager shall be the only individual authorized to approve changes or additional fees or charges under this Agreement on behalf of the State of Iowa, which approval must be in writing.
- 18.5 Semi Annual Review Meetings.** Vendor and the State of Iowa shall, at semiannual intervals, hold a review meeting at the State of Iowa’s offices, or at such other place as is mutually agreed to by the Parties, to review the performance of the Services, service levels as set forth in Exhibit C, discuss fee and expense issues, and address such other issues as may be relevant at the time. The Vendor Manager (and any other Vendor Personnel who attend) will attend at the sole cost of Vendor.
- 18.6 Alert Reports.** The Vendor shall promptly notify the State of Iowa both in writing (i.e., facsimile transmission or courier) and by phone on becoming aware of any change or problem that would negatively impact completion or performance of the Services and/or Deliverables, the progress of tasks assigned under a Statement of Work, or any schedule in a Statement of Work. Both the written notice and phone notice shall include a detailed description or explanation, respectively, of the relevant change or problem. The Vendor shall provide the State with additional details and updates on a frequent basis by secure email regarding the status of any such change or problem.

## **19. General Provisions**

- 19.1 Independent Contractors.** Vendor is an independent contractor and is not an agent or employee of, and has no authority to bind, the State of Iowa by contract or otherwise.
- 19.2 Employment Taxes and Benefits.** Vendor agrees to pay all necessary employment taxes required by law. Vendor Personnel will not be entitled to receive any vacation or illness payments, or to participate in any plans, arrangements, or distributions by the State of Iowa pertaining to any pension, insurance or similar benefits for the State of Iowa employees. In addition, Vendor agrees that it will provide for Workers’ Compensation, unemployment, and all other coverage required under applicable local, state or federal law. Vendor further agrees that it will defend (including payment of all attorneys’ fees) and indemnify the State of Iowa against any claim asserted against the State of Iowa for Vendor’s failure to comply with its obligations under this paragraph.
- 19.3 Assignment.** Vendor may not assign, transfer or delegate its rights or obligations under this Agreement without the prior written consent of the State of Iowa. The State of Iowa reserves the right to assign its rights and obligations hereunder, as it deems appropriate. All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the Parties, their successors, assigns and legal representatives.
- 19.4 Compliance with Iowa Code Chapter 8F.** If this Agreement is subject to the provisions of Iowa Code chapter 8F, then the Vendor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Agreement. The Vendor shall provide the State of Iowa with any compliance documentation, including but not limited to certifications, received from subcontractors by the Vendor.
- 19.5 Force Majeure.** If either Party cannot perform any of its obligations because of any act of God, court order, war, or any other similar cause not within the Party’s reasonable control and could not be avoided through the exercise of reasonable care and diligence (a “**Force Majeure Event**”), then the non-performing Party will: (a) immediately notify the other Party; (b) take reasonable steps to resume performance as soon as possible; and (c) not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues for a period of five (5) business days, the State of Iowa may terminate this Agreement by providing written notice to Vendor. In the event Vendor’s performance hereunder is the subject of any Force Majeure Event, the fees to be paid by the State of Iowa shall be equitably adjusted to reflect the period of non-performance. Notwithstanding the foregoing, a Force Majeure Event will not relieve Vendor of its obligations under Sections 7 (Support Services), 12 (Confidentiality), 13 (Security), and 14 (Disaster Recovery) or any service levels as set forth in Exhibit C. A Force Majeure Event does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of the Vendor or any subcontractor used by the Vendor; claims or court orders that restrict Vendor’s ability to provide goods and services contemplated by this Agreement; strikes; supply chain disruptions; labor unrest; Internet outages; viruses; Trojan Horses; worms; cancelbots; denial of service attacks; hacking; intrusions; security breaches (including but not limited to any Breach of Security as defined in Iowa Code Chapter 715C, breach of confidentiality as provided in Iowa Code §272C.6(4), any Breach of Unsecured PHI as defined by HIPAA and any corresponding Business Associate Agreement(s), and any other breach of privacy or security or disclosure of confidential information as provided by any applicable law, rule, or regulation); or any other similar item, malicious code or action that might interfere with

or adversely affect the Services. If delay results from Vendor's contractor's, subcontractor's or supplier's conduct, negligence or failure to perform, the Vendor shall not be excused from compliance with the terms and obligations of the Vendor unless the subcontractor or supplier is prevented from timely performance by a Force Majeure Event as defined in this Agreement.

- 19.6** Governing Law; Venue. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (a) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (b) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (c) waives any objection to such jurisdiction based on forum non conveniens or otherwise.
- 19.7** Sovereign Immunity. Nothing in this Agreement shall be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State of Iowa, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. The State of Iowa specifically retains and reserves the defense of sovereign immunity and all defenses available to it under State of Iowa and federal laws, rules and regulations for any claim arising out of or related to this Agreement.
- 19.8** Waivers. All waivers hereunder must be made in writing by a duly authorized representative of the Party against whom the waiver is to operate, and failure at any time to require the other Party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver, in whole or in part, of any provision of this Agreement will not be considered to be a waiver of any other provision.
- 19.9** Severability. If any term of this Agreement is found to be unenforceable or invalid for any reason, all other terms will remain in full force and effect.
- 19.10** Construction. All headings used in this Agreement are for reference purposes only and are not part of this Agreement. All personal pronouns used herein, whether used in the feminine, masculine, or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, Subsection or other subpart. The words "include," "includes," "included," "including," "without limitation," or the phrase "e.g." shall not be construed as terms of limitation and shall, in all instances, be interpreted as meaning "including, but not limited to."
- 19.11** Exhibits, Statement(s) of Work and Addenda. All Exhibits, Statement(s) of Work, and Addenda that are referenced herein and appended hereto, or are signed by the Parties on or after the date of this Agreement, are hereby incorporated by reference. The following Exhibits are attached hereto and incorporated herein:
- Exhibit A Services; Fees;
  - Exhibit B Statements of Work;
  - Exhibit C Services Levels;
  - Exhibit D Insurance;
  - Exhibit E Business Associate Agreement(s)
- 19.12** RFP and Vendor's Proposal. The State of Iowa's Request for Proposal #[RFP...] ("**RFP**") and Vendor's Proposal dated [... ..], in response to the RFP ("**Proposal**"), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of Vendor's exceptions, objections or proposed modifications respecting the RFP or any terms associated therewith (collectively "**Vendor Exceptions**") shall be incorporated into this Agreement unless expressly set forth herein. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any Vendor Exceptions shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or the State of Iowa hereunder, unless expressly stated herein. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal (excluding any Vendor Exceptions that are not expressly made a part of this Agreement). The references to the parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal

in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered or stated in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the State shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the State.

- 19.13 Entire Agreement.** This Agreement, as to its subject matter, exclusively and completely states the rights, duties and obligations of the Parties and supersedes all prior and contemporaneous representations, letters, proposals, discussions and understandings by or between the Parties. This Agreement may only be amended in a writing signed by both Parties. In particular, no shrink-wrap, click-wrap, browser-wrap, privacy policies, online terms or other terms and conditions or agreements (“**Additional Terms**”) provided with or related to any Services, Deliverables, products, documentation, or software hereunder shall be binding on the State of Iowa, even if use of such items requires an affirmative “acceptance” of those Additional Terms before access or use is permitted. All Additional Terms shall be of no force or effect and shall be deemed rejected by the State of Iowa in their entirety.
- 19.14 Conflict of Interest.** The Vendor represents, warrants, and covenants that no relationship exists or will exist during the Agreement period between the Vendor and the State of Iowa that is a conflict of interest. No employee, officer or agent of the Vendor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code Chapter 68B shall apply to this Agreement. If a conflict of interest is proven to the State of Iowa, the State of Iowa may terminate this Agreement and the Vendor shall be liable for any excess costs to the State of Iowa as a result of the conflict of interest. The Vendor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Vendor shall report any potential, real, or apparent conflict of interest to the State of Iowa.
- 19.15 Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by a recognized courier service, or mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, to the Parties at the addresses set forth herein. All notices under this Agreement that are addressed as provided in this Section 19.14 (Notices), (a) if delivered personally or by a nationally recognized courier service, will be deemed given upon delivery, or (b) if delivered by mail in the manner described above, will be deemed given on the relevant Party’s receipt of the notice. All notices shall be sent by certified mail or by personal delivery, to the following addresses:

**If to Vendor:**

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**If to the State of Iowa:**

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

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

- 19.16 Agreement Drafted By All Parties.** This Agreement is the result of arm’s length negotiations between the Parties and shall be construed to have been drafted by all Parties such that any ambiguities in this Agreement shall not be construed against either Party.
- 19.17 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement.



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

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

**STATE OF IOWA**, acting by and through the **[Agency]**  
 (“**State of Iowa**” or “**State**”)

**[Name of Vendor]**  
 (“**Vendor**”)

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

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

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

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

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

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

## EXHIBIT A—SERVICES; FEES

This Exhibit A (Services; Fees) is a part of and incorporated into the Software As A Service Agreement and Professional Services (“Agreement”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“State of Iowa” or “State”), and [Name of Vendor], [entity type (e.g., limited liability company, limited liability partnership, or corporation)] (“Vendor”), dated [ ] , 20\_\_ . Unless otherwise specifically defined in this Exhibit A, all capitalized terms used herein shall have the meanings ascribed to them under the Agreement.

### 1. Services other than Application Services

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

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

### 2. Application Services

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

[Vendor: Please Describe Application Services.]

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

(a) *Application Service Fees prior to Go-Live.* The Parties agree that the State shall not be charged or responsible for the payment of any fees for the Application Services until after Go Live; provided, however, as set forth in Section 8.1.1 of the Agreement, if it is necessary for the State of Iowa or its Authorized Contractors to receive, hold, possess, and/or own either all or a portion of the licenses granted pursuant to Section 4.2 of the Agreement for any reason prior to Go Live, Vendor shall grant the State of Iowa and its Authorized Contractors the necessary license during any such period at no charge to the State.

(b) *Subscription Fees after Go-Live.*

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

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

3.1 Third Party Software:

[Vendor: Please describe any third party software.]

3.2 Other Third Party Intellectual Property:

[Vendor: Please describe any other intellectual property.]

**EXHIBIT B—STATEMENT OF WORK NO. 1**

This Statement of Work, effective as of the last signature date set forth below (“**SOW Effective Date**”), is a part of and incorporated into the Software As A Service and Professional Services Agreement (“**Agreement**”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**State of Iowa**” or “**State**”), and [Name of Vendor], [entity type (e.g., limited liability company, limited liability partnership, or corporation)] (“**Vendor**”), dated \_\_\_\_\_, 20\_\_\_\_. Capitalized terms not defined in this Statement of Work are as defined in the Agreement.

**1. Contacts**

Vendor Representative: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Fax number: \_\_\_\_\_  
Email address: \_\_\_\_\_

State of Iowa Representative: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Fax number: \_\_\_\_\_  
Email address: \_\_\_\_\_

**2. Start Date**

Upon execution of the Agreement: \_\_\_\_\_, 20\_\_\_\_

**3. Description of Services and Deliverables**

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

**4. Data Sources.**

**5. Data Migration.**

**6. Implementation.**

**7. Documentation.**

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

**8. Training.**

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

**9. Industry Standards**

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

**10. Personnel to Perform the Services**

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

**11. Cooperation**

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

**12. Performance Measures**

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

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

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

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

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

- Amount at risk – defined in Exhibit C.

## EXHIBIT C—SERVICE LEVELS

This Exhibit describes the performance standards and service levels to be achieved by Vendor in providing the Services:

1. **Definitions.** Except as provided in this Exhibit, capitalized terms shall have the meanings set forth in the Agreement. The following terms, when used in this Exhibit, shall have the following meanings:  
**“Available”** means the Services shall: (a) be available for access and use over the Internet by State of Iowa, Government Entities, State Users, and Users; and (b) provide the functionality required under the Agreement and applicable Statement(s) of Work.  
**“Critical Hours”** means 7:00 AM – 7:00 PM July 15 – November 10.  
**“Server”** shall mean the server(s) on which the Services will be hosted.

2. **Service Levels.**

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

Support Request Classification	Description
Critical	<ul style="list-style-type: none"> <li>▪ Issue affecting entire system;</li> <li>▪ During ‘critical hours’</li> <li>▪ Issue affecting single critical production function, such as, for example, users cannot log in/access the system;</li> <li>▪ System down or operating in materially degraded state;</li> <li>▪ Potential services to Users affected;</li> <li>▪ Data security or integrity at risk;</li> <li>▪ Material financial impact;</li> <li>▪ Declared a Critical Support Request by the State of Iowa CIO or designee; and/or</li> <li>▪ Widespread access interruptions.</li> </ul>
High	<ul style="list-style-type: none"> <li>▪ Primary workflow module failure that materially impairs its performance; and/or</li> <li>▪ Data entry or access is materially impaired on a limited basis.</li> </ul>
Medium	<ul style="list-style-type: none"> <li>▪ System is operating with minor issues that can be addressed with a work around.</li> </ul>
Low	<ul style="list-style-type: none"> <li>▪ Request for assistance, information, or services that are routine in nature.</li> </ul>

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

Support Request Classification	Service Level Metric (Response Time)	Service Level Credits
Critical	100% (24) hours	0.5% of monthly Application Service fees for the initial service level failure and .05% of monthly Application Service fees for each additional twenty-four (24) hours increment that begins after the initial service level failure
High	100% (5) business days	0.1% of monthly Application Service fees for the initial service level failure and 0.01% of monthly Application Service fees for each additional business day increment that begins after the initial service level failure

- iii. Resolution Time Service Level. Resolution time shall be measured from the time when Vendor receives the Support Request until the time Vendor has Resolved the Support Request. “Resolve” means that, as to Errors, Vendor has provided the State of Iowa the corresponding Error Correction and the State of Iowa has confirmed such Error Correction.

Support Request Classification	Service Level Metric (Resolution Time)	Service Level Credits
Critical	100% (3) days	5% of monthly fees for the initial service level failure and 0.5% of monthly fees for first additional one (1) day increment that begins after the initial service level failure and doubling for each additional (1) day
High	100% (5) business days	2.5% of monthly fees for the initial service level failure and 0.25% of monthly fees for each additional one (1) business day increment that begins after the initial service level failure
Medium	100% (30) days	1% of monthly fees for the initial service level failure and 0.1% of monthly fees for each additional fifteen (15) day increment that begins after the initial service level failure
Low	100% (60) days	0.5% of monthly fees for the initial service level failure and 0.05% of monthly fees for each additional thirty (30) day increment that begins after the initial service level failure

- iv. Escalation. With respect to any Critical Support Request, until Resolved, Vendor shall escalate that Support Request within sixty (60) minutes of Receipt to the appropriate Vendor support personnel (as designated by Vendor), including, as applicable, Vendor’s SVP of Client Operations.
- b. Availability Service Level. The Application Services shall be Available for the percentage of the time each month of the Term of the Agreement as set forth below:

i. Availability during Critical Hours.

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

ii. Availability during non-Critical Hours.

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

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

d. Application Services Download Times. Vendor represents, warrants, and covenants that the download time for a page of the Services during Critical Hours shall be:

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

**“Download Time”** means the average time to download any page related to the Services, including all content contained therein. Download time shall be measured using a Vendor-supplied program, and by clock, and shall be measured to the nearest one-tenth of a second for each page, commencing from the operative input from the user, whether by keyboard, mouse click, or any other input device.

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

Tests of Download Times shall be conducted by Vendor over any two (2) hour period during Critical Hours every ten (10) business day(s) using a representative number of logged-on computers or terminals for the selected two (2) hour period, and running a representative sampling of applications then installed. Vendor shall supply the State of Iowa with the results of these tests on a monthly basis. Vendor further agrees to provide, at no cost to the State of



Iowa, measurement tools capable of directly making all measurements necessary to apply the Application Services Response Time warranty in this Section.

- e. Service Level Audits. The State of Iowa or its designee will have the right to audit Vendor's measurement, monitoring, and reporting on all service levels herein, including providing the State of Iowa with access to the data used by Vendor to calculate its performance against the service levels and the measurement and monitoring tools and procedures utilized by Vendor to generate such data for purposes of audit and verification.
- f. Meetings. Vendor and the State of Iowa shall meet at least once a week by conference call or video conference to review the status of open Support Requests, and discuss trends and issues relating to Support Requests and approaches to reducing the number of Support Requests as well as improving both the State of Iowa and Vendor responses to such Support Requests.
- g. Additions, Deletions, and Modifications of Service Levels. After the initial six (6) months following the Effective Date, the State of Iowa may add, modify, or delete service levels specified herein by sending written notice to Vendor at least ninety (90) days in advance; provided that, the total number of such notices (which notices may contain multiple changes) sent by the State of Iowa pursuant to this Section 5.7 (Additions, Deletions, and Modifications of Service Levels) shall not exceed twenty (20) in any contract year.
- h. Service Levels Added. Service Levels shall be added in accordance with the following:
  - i. Where data exists for at least six (6) months from which measurements can be derived, the State of Iowa and Vendor shall review the measurement trends and the levels of quality that were attained during the measurement period and shall work together in good faith to mutually agree, and to establish the service level standard that Vendor will be required to meet; or
  - ii. Where no such data exists, the Parties shall attempt in good faith to mutually agree during a thirty (30) day period on a service level standard using industry standard measures or third party vendor advisory services.

**3. Service Level Failures and Service Level Credits.**

- a. Service Level Failures. Failure to achieve any of the service levels described in Section 5 (Service Levels) of this Exhibit shall constitute a "**Service Level Failure**" and Vendor shall be liable for the Service Level Credits in the amounts set forth in Section 5 (Service Levels). Vendor shall not be responsible for any Service Level Failure caused by the State of Iowa or its agents. Vendor shall promptly notify the State of Iowa of any Service Level Failure.
- b. Service Level Credits. Upon the occurrence of any Service Level Failure, Vendor shall issue to the State of Iowa a credit in the amount set forth in Section 5 (Service Levels) ("**Service Level Credit**"). If more than one (1) Service Level Failure has occurred in a single month, the sum of the corresponding Service Level Credits shall be credited to the State of Iowa. In no event will the aggregate of all Service Level Credits arising as a result of failures by Vendor to perform its Support Services obligations in any month exceed 25% of the amount of the Support Services fees otherwise payable for the most recent three (3) month period except for instances of Service Level Credits associated failures on "Critical" and "High" Resolution Time service levels which will not exceed 100% of the amount of the said Support Services fees. Vendor shall notify the State of Iowa in writing if the State of Iowa becomes entitled to a Service Level Credit, which notice shall be included in the monthly performance reports as described in this Exhibit. The total amount of Service Level Credits that Vendor will be obligated to pay to the State of Iowa, with respect to Service Level Failure(s) occurring each month shall be reflected on the invoice issued in the second month following the month during which the Service Level Failure(s) giving rise to such Service Level Credit(s) occurred. Notwithstanding the foregoing, the calculation of such Service Level Credit(s) shall be based on the credit amounts in effect, and the Support Services fees for, the month during which the Service Level Failure occurred. For example, the amount of Service Level Credits payable with respect to Service Level Failures occurring in August shall be set forth in the invoice issued in October, but shall be calculated using August data. In the event the State of Iowa prepays for any Services more than one month in advance, Vendor will issue refunds or credits to the State of Iowa at the State's sole discretion, within      days of the end of the month in which the Service Level Failure occurred.
- c. Termination for Chronic Service Level Failures. In addition to its termination rights under the Agreement, the State of Iowa may, in its sole discretion, terminate the Agreement without further obligation to Vendor in the event Vendor fails to achieve any of the required Service Levels for (a) three (3) months consecutively, or (b) any three (3) months during a consecutive six (6) month period.

- 4. **Corrective Action Plan**. In the event two (2) or more Critical Support Requests occur in any thirty (30) calendar day period during the Term of the Agreement, or in the event of any Service Level Failure, Vendor shall promptly investigate the root causes of such support issues and shall provide to the State of Iowa within five (5) business days of the occurrence of the second Critical Support Request or the occurrence of the Service Level Failure an analysis of such root causes and a proposed corrective action plan for the State of Iowa's review, comment, and approval (the "**Corrective Action Plan**"). The Corrective Action Plan shall include, at a minimum: (a) a commitment by Vendor to devote the appropriate time, skilled

Vendor personnel, systems support and equipment, and/or resources to remedy, and prevent any further occurrences of Critical Support Request issues; and (b) time frames for implementation of the Corrective Action Plan. There shall be no additional charge (other than those fees set forth in this Agreement(s)) for Vendor's implementation of such Corrective Action Plan in the time frames and manner set forth in the Corrective Action Plan.

5. **Service Outages.**

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

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

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

## EXHIBIT D—INSURANCE

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

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

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

**3. Claims Provision.** All insurance policies required by this Exhibit, with the exception of the policy for Technology Errors and Omissions Insurance and Cyber Liability/Network Security, 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 policies for Technology Errors and Omissions Insurance and Cyber Liability/Network Security may 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 but in no event less than two (2) years as provided in Section 1 of this Exhibit D.

4. **Certificates of Coverage.** At the time of execution of the Agreement, Vendor shall deliver to the State of Iowa certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to the Agreement, certifying that the State of Iowa is named as an additional insured on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the State of Iowa. All certificates of insurance shall be subject to approval by the State of Iowa. The Vendor shall simultaneously with the delivery of the certificates deliver to the State of Iowa one duplicate original of each insurance policy.
5. **Liability of Vendor.** Acceptance of the insurance certificates by the State of Iowa shall not act to relieve Vendor of any obligation under this Agreement. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Vendor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Vendor shall have no claim or other recourse against the State of Iowa for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Vendor. Notwithstanding any other provision of the Agreement, Vendor shall be fully responsible and liable for meeting and fulfilling all of its obligations under this Exhibit and Section 17 (Insurance) of the Agreement.
6. **Waiver of Subrogation Rights.** Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State of Iowa. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State of Iowa for all policies except for the policy for the Technology Errors and Omissions Insurance.
7. **Filing of Claims.** In the event the State of Iowa suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Vendor shall, at the State of Iowa’s request, immediately file a proper claim under such policy. Vendor will provide the State of Iowa with proof of filing of any such claim and keep the State of Iowa fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the State of Iowa. Vendor shall pay to the State of Iowa any insurance proceeds or payments it receives in connection with any such claim immediately upon Vendor’s receipt of such proceeds or payments.
8. **Proceeds.** In the event the State of Iowa suffers a loss that may be covered under any of the insurance policies required under this Exhibit and Section 17 (Insurance) of the Agreement, neither the Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the State of Iowa has fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the State of Iowa all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Exhibit and the Agreement.

## EXHIBIT E—BUSINESS ASSOCIATE AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT** (the “BAA”) is made entered into effective on the [ ] day of [ ], 20 [ ] (“Effective Date”) by and between the State of Iowa, acting by and through the Iowa Department of Administrative Services (“State of Iowa” or “State”), and [name of Vendor] with its principal place of business at [address] (“Business Associate”) for purposes of complying with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended by the Health Information Technology for Economic Clinical Health Act, Publ. L. No. 111-5 (“HITECH”), and the implementing regulations promulgated thereunder that are more specifically referred to as the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E (the “Privacy Rule”); Health Insurance Reform: Security Standards; Final Rules at 45 C.F.R Parts 160 and 164, Subparts A and C (the “Security Rule”); Breach Notification for Unsecured Protected Health Information; Interim Final Rule at 45 C.F.R. Part 164, Subpart D (the “Breach Notification Rule”); Administrative Simplification: Enforcement: Interim Final Rule at 45 C.F.R. Part 160 (the “Enforcement Rule”); and the Final Omnibus Rule Modifying the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules (all of the foregoing acts, laws, regulations, rules and standards, as may be amended from time to time, shall hereinafter be referred to collectively as “HIPAA”). The State and the Business Associate are collectively referred to herein as the “Parties”. This BAA supplements and is made a part of the Software As A Service Agreement and Professional Services Agreement entered into [ ], 20 [ ] by and between Business Associate and the State of Iowa, acting by and through the Iowa Department of Administrative Services (hereinafter, the “Agreement”).

1. **Purpose.** The Business Associate provides certain services on behalf of or for the State of Iowa, including the Iowa Department of Education, whose licensees are Covered Entities, pursuant to the Agreement that may include the exchange of information that is protected by HIPAA. The parties to the Agreement are entering into this BAA to establish the responsibilities of the Parties regarding PHI and to bring the Agreement into compliance with HIPAA.
2. **Definitions.** The following terms used in this BAA shall have the same meanings ascribed to them under HIPAA: Breach, Disclose, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (“PHI”), Required by Law, Secretary, Security Incident, Unsecured Protected Health Information and Use. Unless otherwise specifically defined in this BAA, all other capitalized terms used herein shall have the meanings ascribed to them under HIPAA for purposes of this BAA. In addition, the following terms have the following meanings:
  - (a) “Subcontractor” shall have the meaning ascribed to it under HIPAA and shall be deemed to include, but not be limited to, [name any known subcontractors, such as third-party data hosting provider], and any other subcontractors that may be retained or used by Business Associate for purposes of fulfilling any of its duties or obligations under the Agreement.
  - (b) “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and shall be deemed to expressly include any entity identified in Exhibit (i) of this Exhibit E.
  - (c) “Workforce” means employees, volunteers, trainees, and other persons or entities whose conduct, in the performance of work for a Covered Entity, is under the control of such entity, whether or not they are paid by the covered entity.
3. **Obligations of Business Associate as to PHI.** With regard to the use and/or disclosure of PHI by the Business Associate, Business Associate agrees as follows:
  - (a) Business Associate shall not, and shall ensure that its Workforce, Subcontractors and agents do not, Use or Disclose PHI in any manner that would constitute a violation of HIPAA or any other applicable State or Federal law or regulation governing the privacy of PHI. Business Associate may Use or Disclose PHI only as permitted under the terms of this BAA and as permitted by HIPAA or other applicable State or Federal law not preempted by HIPAA.
  - (b) Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent the Use or Disclosure of PHI other than as provided for by this BAA.
  - (c) Business Associate shall notify the State of Iowa and any applicable Covered Entity of any Use or Disclosure of PHI not provided for by this BAA of which it becomes aware, including Breaches of Unsecured PHI as required at 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware in accordance with Section 6, below.
  - (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate will ensure that any Subcontractors, agents, or other third parties that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. Business Associate agrees that it will be fully and financially responsible and liable to the State of Iowa and any Covered Entities for any failure of a Subcontractor, agent, or other third party to perform and comply with any duties and obligations under this BAA concerning PHI that Business Associate subcontracts or otherwise delegates to a Subcontractor, agent, or third party.

- (e) Upon request, Business Associate shall make available PHI in a Designated Record Set to a Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 C.F.R. §164.524;
- (f) Business Associate shall: (1) make any amendment(s) to PHI in a Designated Record Set as directed by a Covered Entity pursuant to 45 C.F.R. §164.526; or (2) take other measures as necessary to satisfy the obligations of a Covered Entity contained in Exhibit A under 45 C.F.R. § 164.526.
- (g) Within two (2) business days, Business Associate shall forward any request that the Business Associate receives directly from an Individual who (1) seeks access to PHI held by the Business Associate pursuant to this BAA, (2) requests amendment of PHI held by the Business Associate pursuant to this BAA, or (3) requests an accounting of Disclosures, to the State of Iowa and any applicable Covered Entity contained in Exhibit A so the Covered Entity can coordinate a response.
- (h) Business Associate agrees to make available to the Secretary the Business Associate's internal practices, books and records relating to the use and disclosure of PHI for purposes of determining compliance with HIPAA.
- (i) Business Associate agrees to document Disclosures of PHI made by Business Associate, in accordance with its auditing capabilities, which are necessary for the State of Iowa to provide an accounting of such Disclosures to a Covered Entity, so that the Covered Entity can in turn provide the accounting to an Individual. Business Associate shall forward an accounting of such Disclosures for a specific Individual within five (5) business days of receipt of State of Iowa's written request for such accounting.
- (j) To the extent the Business Associate is to carry out one or more of a Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- (k) Business Associate agrees to abide by all State and Federal laws, whether or not referenced or described herein, governing the confidentiality, disclosure, use security and protection of PHI. The Parties agree to negotiate, in good faith, any amendments to this BAA which may be necessary to comply with any applicable State or Federal law including but not limited to any future amendments to HIPAA.

**4. Permitted Uses and Disclosures of PHI by Business Associate.**

- (a) The Business Associate may Use or Disclose PHI received in relation to the Agreement as necessary to perform the services set forth in the Agreement.
- (b) The Business Associate may not de-identify PHI in accordance with 45 C.F.R. § 164.514(a)-(c), unless expressly authorized to do so in writing by the applicable Covered Entity's Security and Privacy Officer.
- (c) The Business Associate agrees to make Uses and Disclosures and Requests for PHI consistent with all applicable Covered Entity's Minimum Necessary policies and procedures.
- (d) The Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by a Covered Entity.
- (e) The Business Associate may Use or Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to who the information is Disclosed that the information will remain confidential and used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been Breached.

**5. Obligations of State of Iowa.** With regard to the Use and/or Disclosure of PHI by the Business Associate, the State of Iowa agrees as follows:

- (a) In the event the State of Iowa is notified by a Covered Entity of any limitation(s) in the Notice of Privacy Practices of the Covered Entity under 45 C.F.R. § 164.520 that may affect the Business Associate's Use or Disclosure of PHI, the State of Iowa shall forward such information to Business Associate.
- (b) In the event the State of Iowa is notified by a Covered Entity of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her PHI in a manner that may affect the Business Associate's Use or Disclosure of PHI, the State of Iowa shall forward such information or notification to the Business Associate.
- (c) In the event the State of Iowa is notified by a Covered Entity of any changes of any restriction on the Use or Disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522 that may affect the Business Associate's Use or Disclosure of PHI, the State of Iowa shall forward such information or notification to the Business Associate.

**6. Breach Notification Obligations of Business Associate.** For purposes of this BAA, the Business Associate is deemed to have discovered any Breach as of the first day on which such Breach is known to the Business Associate or by exercising reasonable diligence, would have been known to the Business Associate, including any person, other than the Individual committing the Breach, that is a Workforce member or agent of the Business Associate. In the event that Business Associate discovers a Breach of Unsecured PHI, Business Associate agrees to notify the State of Iowa and any affected Covered

Entities by phone within two (2) hours after Business Associate first discovers the incident. In addition, Business Associate agrees to take the following measures within forty eight (48) hours after Business Associate first discovers the Breach:

- (a) To notify the State of Iowa and any affected Covered Entities of any Breach. Such notices by the Business Associate shall:
  - i. Include, to the extent possible, the identification of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
  - ii. Be provided without unreasonable delay, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.
- (b) To complete and submit any necessary Information Security Data Breach Incident Report forms as directed by an affected Covered Entity, which may be available on the Covered Entity's website.
- (c) To draft a letter for the Covered Entity to utilize to notify the Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach. Such draft letter shall also be furnished to the State of Iowa so it may ensure that its obligations with respect to any affected Covered Entities are satisfied. The draft letter must include, to the extent possible:
  - i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - ii. A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security Number, date of birth, home address, account number, disability code, or other types of information that were involved);
  - iii. Any steps the Individuals should take to protect themselves from potential harm resulting from the Breach;
  - iv. A brief description of what the Covered Entity, the State of Iowa, and the Business Associate are doing to investigate the Breach, to mitigate harm, and to protect any further Breaches; and
  - v. Contact procedures for Individuals to ask questions or learn additional information, which shall include Covered Entity contact information, including a toll-free telephone number, and e-mail address, web site, or postal address.

**7. BAA Administration.**

- (a) *Term and Termination.* This BAA shall become effective on the Effective Date set forth above and shall terminate upon the termination or expiration of the Agreement or as otherwise provided in this Section. The State of Iowa may terminate this BAA, the Agreement, or any applicable Statement of Work (as defined in the Agreement) or affected Services (as defined in the Agreement) for cause if the State of Iowa, in its sole discretion, determines the Business Associate or any of its Subcontractors or agents has breached a material term of this BAA. The State of Iowa will provide written notice to the Business Associate requesting that the Business Associate remedy the breach within the time frame provided in the notice. The remedy time frame provided the Business Associate will be consistent with the severity of the breach, and will be limited by any time restrictions imposed by a Covered Entity against the State of Iowa in a Covered Entity's corresponding written notice of breach to the State of Iowa, if any. The State of Iowa reserves the right to terminate the BAA, the Agreement, or any or any applicable Statement of Work (as defined in the Agreement) or affected Services (as defined in the Agreement), without notice in the event the State of Iowa determines, in its sole discretion, that notice is either infeasible or inappropriate under the circumstances. Expiration or termination of the Agreement shall constitute expiration or termination of this corresponding BAA. In the event this BAA expires or is terminated for any reason, any duties or obligations of Business Associate under this BAA that by their nature would be intended to apply following any expiration or termination shall survive such expiration or termination.
- (b) *Obligation to Return PHI, Destroy PHI, or Extend Protections to Retained PHI.* Upon expiration or termination of this BAA for any reason, the Business Associate shall, at the State of Iowa's request, return to the State of Iowa or a Covered Entity and subsequently destroy all PHI received from the State of Iowa or a Covered Entity, or created, maintained, or received by the Business Associate on behalf of the State of Iowa or a Covered Entity, that the Business Associate still maintains in any form. Such return and destruction of PHI shall take place in accordance with the requirements for such return or destruction as set forth in the Agreement or as otherwise directed by the State of Iowa or any Covered Entity. The Business Associate shall retain no copies of any PHI unless such return or destruction is not feasible. If return or destruction of the PHI is not feasible, upon expiration or termination of this BAA, the Business Associate shall:
  - i. Retain only that PHI that is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities to the extent Required By Law;
  - ii. Return to the State of Iowa or applicable Covered Entity and subsequently destroy the remaining PHI that the Business Associate still maintains in any form;

- iii. Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as the Business Associate retains the PHI;
  - iv. Not Use or Disclose the PHI retained by the Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in subsection 4(e) above under “Permitted Uses and Disclosures by the Business Associate” which applied prior to termination; and
  - v. Return to the State of Iowa or applicable Covered Entity and subsequently destroy the PHI retained by the Business Associate when it is no longer needed by the Business Associate for its proper management and administration or to carry out its legal responsibilities.
- (c) *Compliance with Confidentiality Laws.* The Business Associate acknowledges that it must comply with all applicable laws that may protect PHI or other patient information received by it, and that it will comply with all such laws, including but not limited to the following:
- i. Medicaid applicants and recipients: 42 U.S.C. § 1396a(a)(7); 42 C.F.R. §§ 431.300 - .307; Iowa Code § 217.30;
  - ii. Mental health treatment: Iowa Code chapters 228, 229;
  - iii. HIV/AIDS diagnosis and treatment: Iowa Code § 141A.9; and
  - iv. Substance abuse treatment: 42 U.S.C. § 290dd-2; 42 C.F.R. part 2; Iowa Code §§ 125.37, 125.93.
  - v. Consumer personal information: Iowa Code ch. 715C.
- (d) *Financial Obligations for Breach Notification.*
- i. Business Associate shall indemnify and hold harmless the State of Iowa and any applicable Covered Entity, their employees, officers, board members, agents, representatives, and officials (“Indemnitees”) from and against any and all claims, actions, suits, costs, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs, taxes, penalties, fines, fees, and expenses (including without limitation, the reasonable value of the time of the Attorney General’s Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) incurred as a result of: the Business Associate’s, or any Subcontractor or agent of the Business Associate’s, breach of this BAA; the Agreement; or conduct of the Business Associate, or the Business Associate’s Subcontractor or agent, that is not in compliance with 45 C.F.R. Part 164, subpart E. Such liability shall not attach to disclosures made at the express written direction of the State of Iowa or a Covered Entity.
  - ii. The Business Associate’s obligations under this subsection 7(d) are not limited to third-party claims but shall also apply to first-party claims by the State of Iowa or a Covered Entity against the Business Associate.
- (e) *Amendment.* The State of Iowa may amend this BAA by providing Business Associate, either by written or electronic means, with an amended version of this BAA. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the State of Iowa of its non-acceptance in accordance with the Notice provisions of this BAA, Section 7(o), within 30 days of the Business Associate’s receipt of any such amendment from the State of Iowa. However, any negotiated alteration of the then current BAA shall have no force or effect until the agreed alteration is reduced to an amendment and signed by the Business Associate, State of Iowa Chief Information Officer, and the State of Iowa Chief Information Security Officer.
- (f) *Survival.* The respective rights and obligations of the parties under this BAA, which require compliance after termination of this BAA, shall survive its termination.
- (g) *Inconsistency with HIPAA.* In the event of an inconsistency between the provisions of this BAA and HIPAA, HIPAA shall control. Where provisions of this BAA are more restrictive than those mandated by HIPAA but are permitted by HIPAA, the provisions of this BAA shall control.
- (h) *Interpretation.* Any ambiguity in this BAA shall be interpreted to permit compliance with HIPAA.
- (i) *Regulatory References.* A reference in this BAA to a section in HIPAA means the section as it may be amended from time to time.
- (j) *Inconsistency with Agreement.* To the extent the terms, conditions, or requirements, duties, or obligations of Business Associate under the Agreement are more stringent or favorable to the State of Iowa than the terms, conditions, requirements, duties, or obligations of Business Associate under this BAA, the terms of the Agreement shall prevail. Conversely, to the extent the terms, conditions, or requirements, duties, or obligations of Business Associate under this BAA are more stringent or favorable to the State of Iowa than the terms, conditions, requirements, duties, or obligations of Business Associate under the Agreement, the terms of this BAA shall prevail.
- (k) *Severability.* In the event any provision of this BAA violates any applicable statute, regulation or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this BAA.
- (l) *Additional Terms.* All choice of law, assignment and standards agreements/requirements as set forth in the Agreement shall be incorporated herein.
- (m) *Entire Agreement.* This BAA constitutes the entire agreement of the Parties with regard to the subject matter hereof and cancels and supersedes any prior business associate agreements between the parties. It is expressly understood



and agreed that no verbal representation, promise or condition, whether made before or after signing of this BAA, shall be binding upon the Parties.

- (n) *No Third Party Beneficiaries.* There are no third party beneficiaries to this BAA between the parties, with the exception of applicable Covered Entities. The Underlying Agreement and this BAA are intended to only benefit the parties to the BAA, and any applicable Covered Entities.
- (o) *Notices.* All notices, requests, approvals, demands and other communications required or permitted to be given under this BAA shall be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier to the party to be notified. All communications will be deemed given when received. The addresses of the parties shall be as follows; or as otherwise designated by any party through notice to the other party:

If to the State of Iowa:


If to an applicable Covered Entity, the corresponding address shall be as designated in Exhibit A, in accordance with Section 5, above.

If to Business Associate:


IN WITNESS WHEREOF, each of the undersigned has duly executed this BAA on behalf of the party and on the date set forth below.

**State of Iowa**

**BUSINESS ASSOCIATE**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_