

REQUEST FOR PROPOSAL

RFP COVER SHEET

Administrative Information

RFP Number	RFP1418238022	Title of RFP	Cashless Payment System	
Agency	Iowa Department of Administrative Services (DAS) on behalf of Department of Corrections			
Number of years of the initial term of the contract	1	Number of possible annual extensions	5	
Available to Political Subdivisions?	yes			
State Issuing Officer: Kelli Sizenbach Phone: 515-725-2275 E-mail: kelli.sizenbach@iowa.gov				
Mailing Address: Iowa Department of Administrative Services Hoover State Office Building, Level 3 1305 East Walnut Street Des Moines, IA 50319-0105				
PROCUREMENT TIMETABLE—Event or Action			Date/Time (Central Time)	
State Posts Notice of RFP on TSB website			12/28/17	
State Issues RFP			12/30/17	
RFP written questions, requests for clarification, and suggested changes from Respondents due			1/9/18	
Follow-up RFP written questions, requests for clarification, and suggested changes from Respondents due (no questions accepted or responded to after this date)			1/23/18	
Proposals Due			2/6/18 /3:00 P.M.	
Relevant Websites				
Internet website where Addenda to this RFP will be posted http://bidopportunities.iowa.gov				
Internet website where contract terms and conditions are posted https://das.iowa.gov/sites/default/files/procurement/pdf/050116%20terms%20services.pdf https://das.iowa.gov/sites/default/files/procurement/pdf/050116%20terms%20goods.pdf				
Number of Copies of Proposals Required to be Submitted: 1 Original, 1 Digital, & 2 Copies				
Firm Proposal Terms				
The minimum number of days following the deadline for submitting proposals that the Respondent guarantees all proposal terms, including price, will remain firm is 120 Days.				

SECTION 1 INTRODUCTION

1.1 Purpose

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

1.2 Definitions

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

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

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

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

“General Terms and Conditions” shall mean the General Terms and Conditions for Services Contracts as referenced on the RFP cover page.

“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.

“Responsible Respondent” means a Contractor that has the capability in all material respects to perform the specifications of the Contract. In determining whether a Contractor is a Responsible

Contractor, the Agency may consider various factors including, but not limited to, the Contractor's competence and qualifications to provide the goods or services requested, the Contractor's integrity and reliability, the past performance of the Contractor and the best interest of the Agency and the State.

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

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

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

1.3 Overview of the RFP Process

This RFP is designed to provide Respondents with the information necessary for the preparation of competitive Proposals. The RFP process is for the Agency's benefit and is intended to provide the Agency with competitive information to assist in the selection process. It is not intended to be comprehensive. Each 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 5, Evaluation and Selection.

1.4 Objectives

Our objectives are to:

- Provide hardware and software for canteen and vending identification and accountancy through a cashless system at the numerous Iowa Department of Corrections locations throughout the State of Iowa.
- Provide employees, offenders and staff the ability to exchange cash into a card to be used in the vending machines.
- Obtain a cashless payment system that will work on any current vending machine on the market and work with the current offender accounting system used by the Department of Corrections.

1.5 Background

The Iowa Department of Corrections contracts vending operations at its nine prison facilities throughout the State of Iowa. The vending operations serve offenders, employees and visitors. There are approximately 8,300 offenders in the prisons at any given time and around 2,500 employees. We require technology to electronically exchange cash to cards which allow purchases through our vending machines and canteen operations. For security purposes, cash cannot be used within the prison facilities. Currently our offender information is tracked through Advanced Technologies Group (ATG which is currently owned by the Keefe Group).

SECTION 2 ADMINISTRATIVE INFORMATION
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2.1 Issuing Officer

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

2.2 Restriction on Communication

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

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 post written responses to questions, requests for clarifications, or suggestions received from Respondents. The Agency's written responses will become an addendum to the RFP. If the Agency decides to adopt a suggestion that modifies the RFP, the Agency will issue an addendum to the RFP.

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

2.6 Amendment to the RFP

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

2.7 Amendment and Withdrawal of Proposal

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

2.8 Submission of Proposals

The Agency must receive the Proposal at the Issuing Officer's address identified on the RFP cover sheet before the "Proposals Due" date 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.**

2.20 Form 22 Request for Confidentiality

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

2.21 Copyright Permission

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

2.22 Release of Claims

By submitting a Proposal, the Respondent agrees that it will not bring any claim or cause of action against the Agency 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.

2.23 Respondent Presentations

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

2.24 Evaluation of Proposals Submitted

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

2.25 Award Notice and Acceptance Period

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

2.26 No Contract Rights until Execution

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

2.27 Choice of Law and Forum

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

2.28 Preference

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

2.29 Restrictions on Gifts and Activities

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

2.30 No Minimum Guaranteed

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

2.31 Appeals

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

SECTION 3 FORM AND CONTENT OF PROPOSALS

3.1 Instructions

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

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

RFP Number: RFP1418238022
RFP Title: Cashless Payment System
Kelli Sizenbach
Iowa Department of Administrative Services
Hoover State Office Building, Level 3
1305 East Walnut Street
Des Moines, IA 50319-0105

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

3.1.2 1 Original, 1 Digital, & 2 Copies of the Technical Proposal shall be timely submitted to the Issuing Officer in a sealed envelope. The Cost Proposal shall be submitted in a separate sealed envelope.

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

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

3.1.3 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 (Required)

An individual authorized to legally bind the Respondent shall sign the transmittal letter. The letter shall include the Respondent's mailing address, electronic mail address, fax number, and telephone number. Any request for confidential treatment of information shall be included in the transmittal letter in accordance with the provisions of Section 2.19.

Exhibit 2 - Executive Summary

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

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

Exhibit 3 - Firm Proposal Terms

The Respondent shall guarantee in writing the goods and/or services offered in the Proposal are currently available and that all Proposal terms, including price, will remain firm 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:
<https://das.iowa.gov/procurement/vendors/how-do-business>

Exhibit 5 - Experience

The Respondent must provide the following information regarding its experience:

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

Exhibit 6 - Termination, Litigation, and Debarment

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

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

Exhibit 7 - Criminal History and Background Investigation

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

Exhibit 8 - Acceptance of Terms and Conditions

By submitting a Proposal, Respondent acknowledges its acceptance of the terms and conditions of the RFP and the 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 9 - Certification Letter

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

Exhibit 10 - Authorization to Release Information

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

Exhibit 11 – Mandatory Specifications

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

Exhibit 12 – Equipment Description

- Describe your cash to card equipment and how it works.
- Describe the process to activate new cards.
- Describe how the communication process between cards and offender account information.
- Describe the ability to add this equipment to vending machines currently on the market.

Exhibit 13 – Software

- Describe how the system's software can be customized.
- Describe ability to integrate with Offender Banking by ATG.
- Provide equipment requirements needed to run the software.
- What operating system does the software require?
- Define the programming language used.
- How often is the software updated?

Exhibit 14 – Reporting

- Describe reports available to offenders and staff.
- Describe how offenders can look up their account information and balance.
- Is there a way for staff to look up offender account balance?

Exhibit 15 – Implementation Plan

- Describe recommended implementation strategy including on-site coordination and support services, best practice consulting options and professional services.
- Identify any third party Respondents involved in Respondent's implementation strategy and describe these relationships.
- Describe the skills and time required by State of Iowa personnel for initial installation and implementation of the proposed system.

- Provide an estimate of State of Iowa staff time required to complete the installation. Describe the documentation provided with the product along with applicable costs for any additional documentation.
- Describe Respondent's experience with installations similar in size. Please provide an implementation schedule, based on weekly milestones (not dates).

Exhibit 16 – Optional Features

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

Exhibit 17 – Service and Maintenance

Provide detailed information on your customer service program and maintenance plans. Include response times and the access to and timeliness of service engineers.

Exhibit 18 - Warranty

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

Exhibit 19 - Addendums

Provide signed copy of posted RFP addendums.

3.3 Cost Proposal

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

- Provide any one time and recurring costs for system. Recurring costs are to be for a 6 year period to cover initial term and extensions to contract.
- Provide the cost to re-order additional cards.
- 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 Section 6.6 of the RFP. Contractors must provide a statement regarding their ability to meet the requirements in this subsection, as well as identifying their transaction reporting capabilities (Level I, II, or III).

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

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

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

3.3.1.3 State Warrant

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

3.3.2 Payment Terms

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

3.3.3 Contractor Discounts

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

3.3.3.1 Prompt Payment Discount

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

3.3.3.2 Cash Discount

The State may consider cash discounts when scoring Cost Proposals.

SECTION 4 SPECIFICATIONS

Overview

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

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

- 4.1** The tool shall provide:
 - 4.1.1** Ability to change cash to card for offenders, staff and visitors.
 - 4.1.2** Ability to check current balance.
 - 4.1.3** Ability to integrate offender information with the current offender accounting program, ATG.
 - 4.1.4** Ability to provide hardware for vending machines currently in the market.

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

4.3 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.

4.4 Post Delivery Documentation
Contractor is to provide the following documentation upon completion of installation:

- Electronic Schematics – Current and accurate set of electronic schematics and system interface documentation.

- Drawings and Documentation – Current and accurate mechanical and optical drawings. The schematics will be consistent and coherent in the use of symbols and abbreviations. The documentation will include descriptions of the system and sub-assemblies rather than simple wiring diagrams. These drawings shall include detailed schematics.
- Operator Instructions - Written operator instructions for the operation of the system, all sub-unit assemblies, and software routines.
- Service Manuals - Current and accurate service manuals are to be provided with the system.

4.5 Warranty

Minimum of 5 year warranty on system to include hardware.

4.6 Maintenance and Support Services

4.6.1 Facility will perform operational maintenance to the system.

4.6.2 Contractor will provide preventative maintenance and inspection on a bi-annual basis.

4.6.3 Contractor will provide same day response time on system issues and outages.

4.7 Training

Contractor will provide general user training and administrator training.

SECTION 5 EVALUATION AND SELECTION
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5.1 Introduction

This section describes the evaluation process that will be used to determine which Proposal(s) provides the greatest 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 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 for the Content and Technical Criteria.

5.4 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.

5.5 Cost Proposal Scoring

After the Technical Proposals are scored, the Cost Proposals will be opened and scored. The cost proposal for each respondent will be evaluated in comparison with the other cost proposals received; however, the number of points possible will be proportional to each respondent's technical evaluation score.

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

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

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

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

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

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

SECTION 6 CONTRACTUAL TERMS AND CONDITIONS

6.1 Contract Terms and Conditions

The Contract that the Agency expects to award as a result of this RFP shall comprise the specifications, terms and conditions of the RFP, written clarifications or changes made in accordance with the provisions of the RFP, the General Terms and Conditions, 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 change except as otherwise expressly stated in its Proposal. If the Contractor takes exception to a provision, it must identify it by page and section number, state the reason for the exception, and set forth in its Proposal the specific RFP or General Terms and Conditions language it proposes to include in place of the provision. If Contractor's exceptions or proposed responses materially alter the RFP, or if the Contractor submits its own terms and conditions or otherwise fails to follow the process described herein, the Agency may reject the Proposal, in its sole discretion.

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

6.2 Contract Length

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

6.3 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 below, unless otherwise required by the Agency.

Type of Insurance	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	\$2 million \$1 Million \$1 Million \$1 Million
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	\$1 Million
Excess Liability, umbrella form	Each Occurrence Aggregate	\$1 Million \$1 Million
Errors and Omissions Insurance	Each Occurrence	\$1 Million
Property Damage	Each Occurrence Aggregate	\$1 Million \$1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law

6.4 Quarterly Report

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

6.5 Terms and Conditions for State of Iowa Purchasing Cards

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

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

- Contractor shall ensure Internet orders are processed via secure websites, featuring Verisign, TRUSTe, BBBOnline, or “https” in the web address;
- Contractor shall shred any documentation with credit card numbers.

6.6 Administrative Fee

Without affecting the approved Product or Service prices or discounts specified in the Master Agreement, the State of Iowa shall be entitled to receive a one percent (1.00%) administrative fee on all sales made within the State of Iowa against this agreement. The administration fee due to the State of Iowa shall be paid quarterly by Contractor directly to the State, made payable to the "Iowa Department of Administrative Services – Central Procurement".

**Attachment #1
Certification Letter**

(Date) _____

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

Re: Request for Proposal Number RFP1418238022- PROPOSAL CERTIFICATIONS

Dear Kelli:

I certify that the contents of the Proposal submitted on behalf of **(Name of Respondent)** in response to **Iowa Department of Administrative Services** for Request for Proposal Number RFP1418238022 for a Cashless Payment System 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) (2016)* a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under *Iowa Code chapter 423* on all sales of tangible personal property and enumerated services. The Act also requires Contractors to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

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

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

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

Sincerely,

Signature

Name and Title of Authorized Representative

Date

Attachment #2
Authorization to Release Information Letter

(Date) _____

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

Re: Request for Proposal Number RFP1418238022- AUTHORIZATION TO RELEASE INFORMATION

Dear Kelli:

(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 RFP1418238022.

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

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

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

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

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

Sincerely,

Signature

Name and Title of Authorized Representative

Date

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

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

1. Confidential Treatment Is Not Requested

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

2. Confidential Treatment of Information is Requested

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

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

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

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

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

Part 1 – No Confidential Information Provided

Confidential Treatment Is Not Requested

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

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

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

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

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

Part 2 - Confidential Treatment is Requested

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

NOTE:

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

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

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

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

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

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

_____ Company

_____ RFP Number

_____ RFP Title

_____ Signature (required)

_____ Title

_____ Date

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.¹

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
Response Check List**

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

Attachment #5 Software License Agreement

This Software License Agreement (the “Agreement”) is effective as of _____ (“Effective Date”), and is made by and between [name of licensor], (“Licensor”) and the State of Iowa (“State”), acting by and through the [name of Agency] (“Agency”) (the State and the Agency shall be referred to individually and collectively as “Licensee”).

5.1 Definitions

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

“Authorized Contractors” mean independent contractors, consultants or other Third Parties who are retained or hired by Licensee or a Governmental Entity to host, maintain, modify, support or enhance the Software or to otherwise assist Licensee or Governmental Entities with their use of the Software consistent with the rights granted herein.

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

“Deficiency” means a defect, flaw, error, bug, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to the Software, including, without limitation, any failure of the Software to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of the Software.

“Documentation” means any and all technical information, commentary, explanations, design and system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and

materials related to or used in conjunction with the Software, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Enhancements” means all updates, upgrades, bug fixes, patches, additions, modifications or other enhancements to the Software (including, without limitation, any new releases or versions of the Software) provided or made available by Licensor or any Third Party under this Agreement or any other agreement (including, without limitation, any agreement for maintenance or support) and all changes to the Documentation and Source Code as a result of such Enhancements.

“Governmental Entity” shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4), or any successor provision to that section. The term Governmental Entity shall also include agencies, independent agencies, the Judicial Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government.

“Public Code” means one or more of the following: (1) any software that contains or is derived in any manner (in whole or in part) from open source software or software subject to similar licensing or distribution requirements; and (2) any software that requires as a condition of its use, modification or distribution that such software (or other software incorporated into, derived from or distributed with such software) be either (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

“Services Contract” means the Services Agreement by and between the Agency and [name of Vendor or Licensor, as applicable] (“Vendor”) dated _____, and all schedules, exhibits, and other attachments to that agreement, including, without limitation, the Statement of Work.

“Software” means the [name specific software product(s)] and all other software, programs, applications, modules and components listed in Schedule A, in all forms, including Source Code and object code, all related Documentation and Enhancements, and all copies of the foregoing.

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

“Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Software stated or expressed in this Agreement, the Services Contract, Documentation, the Licensee’s Request for Proposal No. _____ for the [name of System] (“RFP”), and the [Vendor’s/Licensor’s] proposal dated _____, in response to the RFP (“Proposal”). Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any

applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

“Statement of Work” shall have the meaning ascribed to it in the Services Contract.

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

["Toolsets” means the business process modeling tool and any other programming, IDE, or business analysis tool or set of tools used by the Vendor for development or implementation of the requirements of RFP No. _____.]

“User” means any Third Party that is authorized or permitted by the Licensee or a Governmental Entity to access or use the Software and its functions.

“Warranty Period” shall mean the one year period commencing on the date on which the Licensee provides Vendor with Licensee’s written notice of Final Acceptance of the Software.

All other capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Services Contract.

5.2 Software License

5.2.1 License

Licensor hereby grants to Licensee and to Governmental Entities a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license to:

- 5.2.1.1** Use, install, host, access, execute, copy, modify, edit, format, translate, maintain, support, repair, enhance, test, demonstrate, and display the Software, and prepare derivative works based on the Software, in all media now known or hereafter created;
- 5.2.1.2** Combine and use the Software with other software, firmware, Public Code and hardware;
- 5.2.1.3** Grant any or all of the rights set forth/granted in Subsections 5.2.1.1 and 5.2.1.2 above to Authorized Contractors; and
- 5.2.1.4** Grant rights to access and use the Software and its functions to Users.

All Software subject to this Agreement may be used on any one or more of the computers, data center locations, networks, Internet or intranet sites, servers or other systems of Licensee, any Governmental Entity, or any Authorized Contractor (“Licensee Systems”). For purposes of this Agreement, the parties agree that if the Licensee or any Governmental Entity makes any modifications or enhancements to the Software (whether directly or indirectly through an Authorized Contractor), the Licensee or Governmental Entity who makes such modification or enhancement owns such modifications or enhancements.

The foregoing license grants and rights include a license under any current or future patents owned or licensable by Licensor to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Software with any other Deliverables provided under the Services Contract, including with any hardware and software.

5.2.2 Delivery of Source Code

Licensor shall furnish and deliver to Licensee a complete copy of all Source Code (on a media and in an electronic format acceptable to Licensee) and updated Documentation (including any written information necessary or desirable for the maintenance, modification, compilation, and/or enhancement of the Software): (i) upon Licensee providing either Vendor or Licensor with Licensee's written notice of Acceptance with respect to the Software, (ii) when Licensor or any Third Party delivers, provides or makes available any Enhancements to Licensee, and (iii) within five (5) business days of receiving any written notice from Licensee requesting the Source Code and Documentation. All of the rights and privileges granted under this Agreement with respect to the Software shall apply to the Source Code, and Licensee, Governmental Entities, and their Authorized Contractors shall be entitled to exercise all of such rights and privileges with respect to the Source Code, including all rights to maintain, support, modify, enhance, and prepare derivative works based upon, the Software and/or the Source Code.

5.2.3 Licensee Not Required to Accept or Install Enhancements

Licensor shall not condition any of the Licensee's rights and remedies, or the Licensor's obligations, under this Agreement or any other agreement related to the Software (including, but not limited to, any agreement related to maintenance or support of the Software), on the Licensee accepting or installing any Enhancements or additional functionality provided by Licensor.

5.3 Term

The term of this Agreement and the license granted hereunder shall be perpetual unless terminated by either party only in accordance with the express terms of this Agreement.

5.4 Delivery and Installation

Licensor shall deliver the Software to Licensee and setup and install the Software (either directly or indirectly, through Vendor) for use on the Licensee Systems specified by Licensee in accordance with [the Services Contract and the Statement of Work]. Licensor shall bear all freight, shipping, handling and insurance costs for delivery of the Software and shall bear all risk of loss with respect to the Software, including any losses resulting from any damage to or destruction of the Software, in whole or in part, which may occur prior to Licensee's delivery of written notice of Acceptance to Licensor with respect to the Software.

5.5 Compensation

5.5.1 License Fee

In consideration of the grant of the perpetual license and all other rights granted to Licensee and Governmental Entities under this Agreement, Licensor shall be entitled to receive the amount specified in Schedule A to license the Software, subject to all of the

terms and conditions of this Agreement and the Services Contract. Such amount, when paid, shall be deemed a fully paid-up license fee, and Licensee and Governmental Entities shall not be required to pay any additional license fees, expenses, costs, charges or other amounts in connection with this Agreement and the rights granted hereunder, unless otherwise agreed by Licensee in writing.

5.5.2 Invoice and Payment

Upon Licensors receipt of a copy of Licensees written notice to Vendor of Licensees Acceptance of the Software, Licensor shall submit an invoice to the Licensee requesting payment of the license fee specified in Schedule A. In submitting its invoice, Licensor shall comply with all applicable rules concerning the payment of fees, charges or other claims, and Licensor will include with its invoice appropriate documentation as necessary to support the fees stated on the invoice and all information reasonably requested by the Licensee. The Agency shall pay all approved invoices in accordance with and subject to the terms and conditions of the Services Contract, including Sections 5.5.1- 5.5.4, 5.5.6, 5.5.7 and 5.9.4 thereof. Notwithstanding anything herein to the contrary, the Agency shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Agency believes the invoice is inaccurate or incorrect in any way.

5.5.3 Set Off

In the event that Licensor owes the Agency or the State any sum under the terms of this Agreement, the Services Contract, any other agreement, pursuant to a judgment, or pursuant to any law, the Agency may set off such sum against any sum invoiced to the Agency in the Agency's sole discretion unless otherwise required by law. Amounts due to the Agency or State as liquidated damages or any other damages awarded by a court, an administrative law judge, or any other similar entity, may be deducted by the Agency from any money or sum payable by the Agency to Licensor pursuant to this Agreement or any other agreement between Licensor and the Agency or the State.

5.5.4 Withholding

In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Licensor, in whole or in part, without penalty or legal liability to Licensee or work stoppage by Licensor, in the event: (i) Licensor fails to provide Software or correct any Deficiencies with respect to any Software to Licensees satisfaction; (ii) Licensor fails to perform any of its other obligations as set forth in this Agreement and/or the Services Contract; or (iii) the Software or any portion thereof fails to meet or conform to any applicable Specifications. No interest shall accrue or be paid to Licensor on any compensation or other amounts withheld or retained pursuant to the Section 5.5.4.

5.6 Representations, Warranties and Covenants

5.6.1 Licensor represents and warrants that during the Warranty Period, the Software (in whole and in part) shall: (i) be free from material Deficiencies; (ii) conform to and operate in accordance with all Specifications; and (iii) be compatible with and interoperate fully and correctly with the Licensee Systems specified in Schedule B. Licensor warrants that all media containing or relating to the Software furnished hereunder shall be free from defects in material and workmanship. During the

Warranty Period, Licensor shall, at Licensee's request and at Licensor's expense, repair, correct or replace any Software that fails to comply with the warranties and requirements of this Section 5.6.1 promptly upon receiving notice of such failure from Licensee, but in no event more than 3 days after the date of receipt of such notice. In the event Licensor is unable to repair, correct or replace such Software to Licensee's satisfaction, Licensor shall refund the fees or other amounts paid for such Software within ten (10) business days after Licensee's request for such refund. The foregoing shall not constitute an exclusive remedy under this Agreement, and Licensee shall be entitled to pursue any other available contractual, legal or equitable remedies.

5.6.2 Licensor represents and warrants that Licensor is fully aware of Licensee's business requirements and intended uses for the Software as set forth in [the RFP], and the Software shall satisfy such requirements in all material respects and is fit for such intended uses.

5.6.3 Licensor represents and warrants that: (i) it is the owner of the Software and any and all intellectual property rights in and to such Software, including, but not limited to, copyrights, trademarks, trade secrets, trade dress, and/or patent rights; (ii) it owns, possesses, holds, and has received all rights, permits, permissions, licenses and authority necessary to provide all Software to Licensee hereunder and to grant and convey the benefits, licenses and other rights granted or conveyed to Licensee and Governmental Entities hereunder without violating any rights of any Third Party; (iii) the Software shall be wholly original with and prepared solely by Licensor; (iv) Licensor has not previously and will not grant any rights in the Software to any Third Party that are inconsistent with the rights granted herein; and (v) Licensee and Governmental Entities shall peacefully and quietly have, hold, possess, use and enjoy all Software without suit, disruption or interruption.

5.6.4 Licensor represents and warrants that: (i) the Software (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, the Software); (ii) Licensee's (and any Governmental Entity's) use of the Software in accordance with the terms of this Agreement; and (iii) Licensee's (and any Governmental Entity's) exercise of the rights, licenses and benefits granted or conveyed hereunder, do not and will not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Licensor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. Licensor shall immediately inform Licensee in writing upon becoming aware of any actual, potential or threatened claim of infringement or violation of any intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. If such a claim arises or is likely to arise, then Licensor shall, at the Licensee's request: (i) procure for the Licensee and Governmental Entities the right or license to continue to use the Software at issue; (ii) replace such Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation; or (iii) modify or replace the affected portion of the Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation. In the event

Licensor is unable to fulfill its obligation under (i), (ii) or (iii) above as requested, Licensor shall accept the return of the Software and refund to the Licensee all fees, charges and any other amounts paid by the Licensee with respect to such Software. In addition, Licensor agrees to fully indemnify and hold harmless the Licensee, Governmental Entities and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Licensee and shall survive termination of this Agreement.

- 5.6.5** The Licensor represents and warrants that all Software provided under this Agreement which uses date data shall accurately process data, including but not limited to, calculating, comparing and sequencing from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, integral calculations, day-in-year calculations, day-of-week calculations and week-of-year calculations; and not experience abnormal ending and/or produce invalid or incorrect results in the operation of the Software or Licensee's System. If the Software is to perform as a system with other hardware and/or software, then this warranty shall apply to the Software as it processes, transfers, sequences data, or otherwise interacts with other software, hardware, components or other parts of the system, provided that such other software, hardware, components or parts do not fail to meet any applicable requirements of this Section 5.6.5. The remedies available to the Licensee for breach of this warranty include, but are not limited to, repair or replacement of non-compliant Software. Nothing in this warranty shall be construed to limit any rights or remedies of the Licensee under this Agreement with respect to Deficiencies in the Software other than data processing compliance.
- 5.6.6** The Licensor represents and warrants that all Software and Enhancements do not and shall not as delivered or provided by Licensor contain an anti-use device, a disabling device, lockup program, a so-called "time bomb" or "drop dead" device, "back door," instructions, contaminants, viruses, Trojan Horses, worms, cancelbots, or any other mechanism, code or computer programming routine that will disable, damage, impair or impede, lock-up, alter, halt, abnormally end, surreptitiously intercept, expropriate or interfere with the Software, Licensee Systems or any data or information of Licensee. Licensor further represents and warrants that all Software and Enhancements do not contain any other programming or device of any kind that would allow unauthorized access to the Software by Licensor or any other person or any Third Party. Licensor covenants that it will not under any circumstance, including enforcement of a valid contract right, (i) install or trigger a lockup program or disabling device, or (ii) take any step that would in any manner interfere with Licensee's use of the Software or Licensee Systems, or restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this provision, Licensor shall, immediately after receipt of notification of the breach, cure the breach to Licensee's satisfaction, including, without limitation, repairing, at Licensor's expense, any damage done to the Software or Licensee Systems or any other property.
- 5.6.7** Licensor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, local and international laws, rules, regulations, codes, orders and ordinances in connection with its performance of this Agreement.

- 5.6.8** Licensor represents and warrants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.
- 5.6.9** Licensor represents and warrants that the Software and the license, use and other rights granted hereunder comply with, and shall comply with, all applicable federal, state, local and international laws, rules, regulations, codes, orders and ordinances in effect as of the date of this Agreement, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.
- 5.6.10** Licensor represents and warrants that it has not incorporated and will not incorporate, without the prior written consent of Licensee, any Public Code, in whole or in part, into any part of the Software or any Enhancement, or use Public Code, in whole or in part, in the development of any part of the Software or any Enhancement in a manner that may subject the Software or any Enhancement, in whole or in part, to all or part of the license obligations of any Public Code. Existing public code currently in use within the Licensor's software is described in Schedule A of this agreement. Licensor represents and warrants that nothing in Licensor's agreements with Third Parties for use and incorporation of Public Code into the Software conflicts or will conflict with the terms of this Agreement, or interferes or will interfere in any manner with Licensee's (and any successor entity's or Governmental Entity's) full exercise of the rights, licenses and benefits granted or conveyed herein.
- 5.6.11** Licensor represents and warrants that all Documentation will accurately reflect the operation of the Software or other Deliverables to which the Documentation pertains and will enable the Licensee to use, modify and maintain the Software fully and completely.
- 5.6.12** Licensor's warranties provided in this Section 6 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Licensee.

5.7 Termination

5.7.1 Termination by Licensee for Cause

The Licensee may terminate this Agreement, without penalty or legal liability, upon written notice for the breach by Licensor of any material term, condition or provision of this Agreement, if such breach is not cured within any time period specified in the notice of breach or any subsequent notice delivered by Licensee to Licensor, assuming cure is feasible. The Licensee's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Licensee.

5.7.2 Termination by Licensee for Reasons Other Than Cause

Licensee may terminate this Agreement for any of the reasons for which the Agency may terminate the Services Contract (including Sections 5.9.2 and 5.9.3, but excluding Section 5.9.1) upon providing any applicable written notice expressly required to be provided pursuant to the Services Contract. For purposes of this Section 5.7.2, all references in the Services Contract to the terms “State,” “Agreement,” “Deliverables,” and “Vendor,” shall be deemed to include and additionally refer to the terms “Licensee,” “Agreement,” “Software,” and “Licensor,” respectively, as used herein. Licensee’s right to terminate this Agreement for any of the reasons provided herein shall survive termination of the Services Contract.

5.7.3 Termination by Licensor for Cause

Licensor may only terminate this Agreement and revoke the license and other rights granted under this Agreement if Licensee has breached this Agreement by failing to pay in full the license fee specified in Section 5.5.1 in accordance with the terms of this Agreement and the Services Contract, or if Licensee commits a material breach of Section 5.9 of this Agreement, provided in either event that Licensor first gives Licensee written notice of the alleged breach and a 60-day period in which to cure the breach. Licensor may not terminate this Agreement and revoke the license and other rights granted hereunder if Licensee’s failure to pay any portion or all of the license fee or other amounts arises from or relates to Licensee’s withholding or retention of such amounts in accordance with this Agreement or the Services Contract. Upon termination of this Agreement by Licensor in accordance with this Section 5.7.3, Licensee will return the Software to Licensor or will certify in writing to Licensor that it has destroyed all copies of the Software. Except as expressly provided in this Section 5.7.3, Licensor shall not be entitled to terminate this Agreement or revoke the license and other rights granted herein.

5.7.4 Limitation of the Licensee’s Payment Obligations

In no event shall Licensee be required to pay any amounts other than those expressly stated in Section 5.5.1 of this Agreement. The Licensee (and Governmental Entities) shall not be liable, under any circumstances and regardless of termination of this Agreement, for any of the following:

5.7.4.1 The payment of unemployment compensation to Licensor’s employees;

5.7.4.2 The payment of workers’ compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

5.7.4.3 Any costs incurred by Licensor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Services Contract;

5.7.4.4 Any damages or other amounts for or relating to the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement, the Services Contract or any agreement with Third Parties;

5.7.4.5 Any taxes Licensor may owe in connection with the performance of this Agreement or the Services Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

5.8 Indemnification

5.8.1 Licensor and its successors and permitted assigns shall indemnify and hold harmless the Licensee and Governmental Entities and their employees, officers, directors, agents, and officials (individually and collectively "Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) 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:

5.8.1.1 Any violation or breach of any term or condition of this Agreement by Licensor; or

5.8.1.2 Any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Licensor, its officers, employees, agents, directors, contractors or subcontractors; or

5.8.1.3 Failure by Licensor or its employees, agents, officers, or directors to comply with any applicable local, state, and federal laws, rules, ordinances or regulations; or

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

5.8.2 Licensor's obligations under this Section 5.8 are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.

5.8.3 Licensor shall be liable for any personal injury or damage to property caused by the fault or negligence of Licensor, its officers, directors, employees, agents, contractors and subcontractors.

5.8.4 Licensor's duties as set forth in this Section 5.8 shall survive the 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 Licensee or any other Indemnitee.

5.9 Contract Administration

5.9.1 Independent Contractor

The status of the Licensor shall be that of an independent contractor. Licensee shall not provide the Licensor with office space, support staff, equipment or tools, or supervision

beyond the terms of this Agreement. Neither the Licensor nor its employees shall be considered employees of the State of Iowa. Neither the Licensor nor its employees are eligible for any State employee benefits, including but not limited to, retirement benefits, insurance coverage or the like. Neither the Licensor nor its employees shall be considered employees of the Licensee or the State of Iowa for federal or state tax purposes. Licensee shall not withhold taxes on behalf of the Licensor (unless required by law). The Licensor shall be responsible for payment of all taxes in connection with any income earned in connection with this Agreement.

5.9.2 Confidentiality

Except as provided or contemplated herein, and subject to applicable federal, state or international laws, rules or regulations (including Iowa Code Chapter 22 and [insert citation for the Agency's Fair Info. Practices rules) the Licensee shall not disclose to Third Parties (excluding Governmental Entities and Authorized Contractors) any information of Licensor that is marked or otherwise clearly identified by Licensor as Confidential Information without the prior written consent of Licensor. Licensor shall limit such identification to information it reasonably believes is entitled to confidential protection pursuant to such applicable laws, rules and regulations. Notwithstanding the foregoing, the Licensee may disclose Licensor's Confidential Information pursuant to: (i) any legal, judicial, or administrative proceedings, subpoena, summons, order, ruling or other legal or administrative processes; and/or (ii) applicable laws, rules, or regulations. In such event, the Licensee shall provide prompt notice to Licensor of the circumstances giving rise to the Licensee's disclosure. Licensor acknowledges that the Licensee is subject to Iowa Code Chapter 22 and other laws, rules and regulations governing public records. If a request is made to view or otherwise access Licensor's Confidential Information pursuant to such laws, rules or regulations, the Licensee will promptly notify Licensor of the request. Subject to the foregoing, the Licensee will use reasonable efforts to protect Licensor's Confidential Information provided such information can reasonably be determined to constitute a confidential record under Iowa Code Section 22.7 or other applicable laws, rules or regulations. In the event the Licensee reasonably determines that such information is not a confidential record, the Licensee may release such information unless Licensor files an action in Polk County District Court to prevent the release of the requested information within ten (10) days of receiving notice from the Licensee.

5.9.3 Compliance with Laws

Licensor and its employees, agents, officers, directors, contractors and subcontractors shall comply with all applicable federal, state, international and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including, without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Administrative Services or 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. Licensor shall comply with any applicable reporting and compliance standards of the Iowa Department of Administrative Services regarding equal employment. Licensor may be required to submit its affirmative action

plan to the Iowa Department of Administrative Services to comply with the requirements of 11 Iowa Admin. Code 121. Licensor represents and warrants that it has complied with all federal, state, foreign and local laws, codes, rules, ordinances, orders and regulations applicable to the performance of its obligations under this Agreement.

5.9.4 Amendments

This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

5.9.5 Third-Party Rights

No person other than the parties hereto, their respective successors and permitted assigns, Governmental Entities, Users and Authorized Contractors may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Licensee, Governmental Entities, Users, Authorized Contractors, and the Licensor.

5.9.6 Choice of Law and Forum

This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Licensor hereby irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Licensee, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Licensor irrevocably consents to service of process by certified or registered mail addressed to the Licensor's designated agent. The Licensor appoints [name of agent] at [address of agent], as its agent to receive service of process. If for any reason the Licensor's agent for service is unable to act as such or the address of the agent changes, Licensor shall immediately appoint a new agent and provide the Agency with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Licensee. Nothing in this provision will alter the right of the Licensee to serve process in any other manner permitted by law. This Section 5.9.6 shall survive termination of this Agreement.

5.9.7 Assignment and Delegation

This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Licensee may assign, transfer, or convey this Agreement, in whole or in part, to any State agency, Governmental Entity or unit of State government that succeeds the Agency's rights hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency to which the Software relates. For purposes of construing this clause, a transfer of a controlling interest in the Licensor, a merger, sale or consolidation of Licensor, or a sale of substantially all of Licensor's assets shall be considered an assignment. Licensor agrees that it shall provide Licensee with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Licensor and of any proposed merger, sale or consolidation of Licensor. Licensor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Licensor or any affiliate thereof without the prior written consent of Licensee.

5.9.8 Integration

This Agreement represents the entire agreement between the parties concerning the grant of the perpetual license, distribution rights and other rights granted to Licensee and Governmental Entities under this Agreement, and neither party is relying on any representation that may have been made with respect thereto which is not included in this Agreement. [This Agreement shall not supersede the Services Contract.] Licensee shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "sneakwrap" agreement, or any other similar agreement that may accompany or relate to the Software. Licensor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Licensee on the basis of draftsmanship or preparation hereof.

5.9.9 Headings or Captions and Terms

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

5.9.10 Not a Joint Venture

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

5.9.11 Obligations Beyond Agreement Term

This Agreement shall remain in full force and effect perpetually unless terminated pursuant to Section 7 of this Agreement. Licensor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 5.2.1-5.2.3, 5.5.2-5.5.4, 5.6-8, 5.9.4, 5.9.2, 5.9.3, 5.9.5, 5.9.6, 5.9.8, 5.9.11-5.9.16, 5.9.18, 5.9.19, 5.9.22, 5.9.24, 5.9.26, and 5.9.29-5.9.32 shall survive termination of this Agreement.

5.9.12 Use of Third Parties

None of the services to be provided by Licensor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of Licensee. Licensee's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of Licensee, whether financial or otherwise. Any subcontract to which the Licensee has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Licensee may deem necessary. Licensor is solely liable for any and all payments that may be due to the subcontractor pursuant to its subcontract agreement with Licensor. Licensor shall indemnify and hold harmless the Licensee from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor's breach of any subcontract into which it enters, including Licensor's failure to pay any and all amounts due by Licensor to any subcontractor. No subcontract or delegation of work shall relieve or discharge Licensor from any obligation, provision, or liability under this Agreement. Licensor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Licensor, would constitute a breach of this Agreement, shall be deemed a breach by Licensor and have the same legal effect.

5.9.13 Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of Licensee and the Licensor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

5.9.14 Notices

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

If to Licensee:

If to Licensor:

Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier. From time to time, either party may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

5.9.15 Cumulative Rights

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

5.9.16 Severability

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

5.9.17 Authorization

Licensor represents and warrants to Licensee that:

5.9.17.1 It has the right, power and authority to enter into and perform its obligations under this Agreement;

5.9.17.2 It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself enforceable in accordance with its terms.

5.9.18 Successors in Interest

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

5.9.19 Record Retention And Access

The Licensor shall maintain books, records, and documents which sufficiently and properly document all services and deliverables provided under this Agreement and calculate all charges billed to the Licensee throughout the term of this Agreement for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or completion of any required audit. The Licensor shall permit the Licensee, the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Licensor relating to orders, invoices, or payments or any other documentation or materials pertaining to this Agreement. The Licensor shall not impose or seek payment for any charge, fee or expense associated with any audit or examination of the Licensor's books and records conducted in accordance with this provision.

5.9.20 Counterparts

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

5.9.21 Additional Provisions

The parties agree that if an Addendum, Schedule, Rider or Exhibit is attached and referred to in this Agreement then the same shall be deemed incorporated herein by reference.

5.9.22 Further Assurances and Corrective Instruments

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

5.9.23 Award of Related Agreements

The Licensee may undertake or award supplemental or successor agreements for work related to this Agreement, the Services Contract or with respect to the Software. Licensor shall cooperate fully with other contractors, consultants and other persons who may be engaged by Licensee in connection with this Agreement, the Services Contract or with respect to any of the Software. Licensor will ensure that its subcontractors, if any, will abide by this provision.

5.9.24 Sovereign Immunity

The Agency, Governmental Entities and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations, including, without limitation, Iowa Code Chapter 669 and the Constitution of the State of Iowa.

5.9.25 Care of Property

Licensor shall be responsible for the proper custody and care of any Licensee Property furnished for Licensor's use in connection with the performance of the Agreement, and Licensor will reimburse the Licensee for any loss or damage to such property caused by Licensor, or any person, agent or subcontractor employed or utilized by Licensor, normal wear and tear excepted.

5.9.26 Licensor shall notify Licensee in writing if any of the following has been engaged in by or occurred with respect to Licensor or any corporation, shareholder or entity having or owning a controlling interest in Licensor:

5.9.26.1 Licensor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

5.9.26.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

5.9.26.3 Making an assignment for the benefit of creditors; or

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

5.9.26.5 An order is entered approving an involuntary petition to reorganize the business of Licensor for all or part of its property; or

5.9.26.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Licensor is issued by any court or administrative agency against all or any material portion of Licensor's property; or

5.9.26.7 Taking any action to authorize any of the foregoing.

5.9.27 Material Breaches

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

5.9.28 Taxes

Licensor shall be responsible for paying any taxes incurred by Licensor in the performance of this Agreement. The State and the Agency are exempt from the payment of Iowa sales and other taxes.

5.9.29 Obligations of Joint Entities

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

5.9.30 Attorney's Fees and Expenses

Subject to the other terms and conditions of this Agreement, in the event Licensor defaults in any obligations under this Agreement, Licensor shall pay to Licensee all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of Licensee) incurred by Licensee in enforcing this Agreement or any of its rights and remedies with respect thereto.

5.9.31 Time is of the Essence

Time is of the essence with respect to Licensor's performance of its obligations under this Agreement. Licensor shall ensure that all personnel providing services to Licensee are responsive to Licensee's requirements and requests in all respects.

5.10 Execution

Attachment #6
State of Iowa Security Terms (“Security Terms”)

These Security Terms are entered into by and between [name of Vendor], a [entity type (e.g., limited liability company, limited liability partnership, or corporation)] registered in the State of [State of registration (e.g., Delaware)], with its principal place of business at [address of Vendor’s principal place of business] (“Vendor”) and the State of Iowa, acting by and through the Department of Administrative Services (“State of Iowa” or “State”). These Security Terms shall apply in addition to any other terms and conditions agreed to by the Parties, and to the extent of any conflict or inconsistency between the specific provisions of these Security Terms and the terms of any other agreement between the Parties, these terms shall prevail.

6.1 Definitions

6.1.1 Capitalized terms not defined herein are as defined in the Agreement. The following capitalized terms shall have the following meanings:

The term “**Confidential Information**” means, subject to the provisions of these Security Terms, the underlying 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. Any information provided to Vendor by the State or any other Governmental Entity or otherwise accessed, collected, processed, stored, or transmitted to or by Vendor in connection with the underlying agreement, or any summaries, records, descriptions, modifications, compilations, negatives, drawings, adaptations and other documents or materials prepared by Vendor from such information (“**Work Product**”), shall be considered confidential by Vendor (“**State of Iowa Confidential Information**” or “**State Confidential Information**”).

The term “**Governmental Entity**” means any governmental entity as defined in Iowa Code Section 8A.101, or any successor provision thereof.

6.2 Data Ownership

All data, including all State Confidential Information, shall be and remain the sole and exclusive property of the State.

6.3 Vendor’s access to and use of State data

Vendor and any of its employees, affiliates, subcontractors, agents, and other third parties acting on Vendor’s behalf shall not use any State Confidential Information for any purpose other than fulfilling Vendor’s express obligations and duties pursuant to the underlying agreement, and in accordance with the terms and conditions set forth in these Security Terms and applicable laws, rules, and regulations.

6.4 Data Protection

Protection of personal privacy and data, including State Confidential Information, shall be an integral part of the business activities of Vendor to ensure there is no inappropriate or

unauthorized access to or use of the State's Confidential Information at any time. To this end, Vendor shall safeguard the confidentiality, integrity, and availability of the State's Confidential Information. In so doing, Vendor shall comply with the following:

- 6.4.1** Vendor shall implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, or theft of State Confidential Information. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53 Revision 4 and ISO27001:2013), and not less stringent than the measures Vendor applies to safeguard its own Confidential Information. 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 security, privacy, or safeguarding requirements.
- 6.4.2** All State 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 of the State's data, including State 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 State Confidential Information, unless the State approves in writing the storage of Confidential Information on a Vendor portable device that does not satisfy these standards.
- 6.4.3** At no time shall any State Confidential Information be copied, disclosed, or retained by Vendor, or Vendor's employees, affiliates, subcontractors, agents, and other third parties acting on Vendor's behalf for use in any transaction that does not include the State.

6.5 Data Location

Vendor shall provide hosting or infrastructure services to the State and Governmental Entities solely from data centers located in the continental United States of America. Storage of State Confidential Information 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 employees, affiliates, subcontractors, agents, and other third parties acting on Vendor's behalf to store any State data, including State Confidential Information, 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 may permit its employees, affiliates, subcontractors, agents, and other third parties acting on Vendor's behalf to access State Confidential Information remotely only as required to provide technical support. Vendor may not provide technical user support on a 24/7 basis using a Follow the Sun model.

6.6 Security Incident/Notification

- 6.6.1** Vendor will notify the State within two (2) hours of Vendor's discovery of any actual or suspected breach of confidentiality, privacy or security (including any unauthorized access) with regard to any State data, including Confidential Information, or any breach of Vendor's or the State's data security procedures, which include, but are 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, and any other breach of security or privacy as defined by any applicable law, rule, or regulation. Such notification to the State must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent within forty-eight (48) hours of discovery or notification of the breach or suspected breach.

6.6.2 Investigations and Remedies

Vendor agrees, at its sole expense, to take all steps necessary to promptly remedy any breach or suspected breach described in section 6.6.1, above, and to fully cooperate with the State in resolving such breach or suspected 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 in investigating the breach or suspected 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 a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting State 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 relating to any such security breach or suspected breach on behalf of the State unless the State specifically requests in writing that Vendor do so. Vendor and the State will work together to formulate a plan to rectify all security breaches.

6.6.3 Additional Remedies in the Event of Security Breach

Upon the State's determination that a breach of security (including but not limited to any breach of security as defined in Iowa Code Chapter 715C, or any other breach of security or privacy as defined by any applicable law, rule, or regulation) involving or relating to any State data, including State Confidential Information, has occurred or is reasonably possible, Vendor shall fully cooperate with the State in rectifying any breach or misuse, including notifying all of the State's affected users. The State shall determine, in its sole discretion, the content and means of delivery of such notification. Notwithstanding any provision in these Security Terms or any other agreement between the Parties 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 or the costs, expenses and attorney fees of other counsel retained by the State or any other Governmental Entity) related to, arising out of, or incurred by or on behalf of the State as a result of, any security breach caused directly or indirectly, in whole or in part, by Vendor, its affiliates, employees, or subcontractors, including, but not limited to, the costs of notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including but not limited to preparation, printing, mailing and delivery); the cost of opening and closing accounts, printing new checks,

embossing new cards; the costs of forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; the costs of obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all other costs associated with corrective or other actions that are taken to mitigate or address the security breach. Vendor will reimburse or pay to the State 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 to Vendor.

6.7 Import/Export/Deletion of Confidential Information

6.7.1 Import and Export of Data

To the extent State Confidential Information is stored or accessible in electronic format in connection with the hosting services, the State shall have the ability to import or export all State data and information, including but not limited to State Confidential Information, in whole or in part from infrastructure or hosting services, at no charge to the State, and in such formats as may be acceptable to the State or any Governmental Entity, without interference from Vendor. This includes the ability for the State to import or export, or have imported or exported, such information and data to/from/by other contractors. In the event the State is unable to successfully import or export data and information in whole or in part, Vendor shall assist the State in doing so upon the State'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 has obtained an export of any requested data or information within one day of any request in the format specified by the State.

6.7.2 Destruction of Data and Return of other Confidential Information

In addition to the requirements of Section 6.7.1, on the State of Iowa's written request or upon expiration or termination of the underlying agreement, subject to the requirements of Section 6.8 (Termination/Expiration of Service), Vendor will promptly return or destroy, at the State's option, all State data or information, including but not limited to State Confidential Information, and provide a notarized written statement to the State certifying that all State data or information, including but not limited to State Confidential Information, in its or its agents, contractors, or other third parties operating on its behalf's possession has been delivered to the State or destroyed, as requested by the State. To the extent Vendor is required to destroy any State data or information, including but not limited to State of Iowa Confidential Information, such State 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, regulations, policies, or procedures, including but not limited to State record-retention requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items required for use of any licenses or deliverables previously supplied by Vendor).

6.8 Termination/Expiration of Service

6.8.1 Transition Assistance

Vendor agrees that in connection with any termination or expiration of the underlying agreement, Vendor will continue to perform such services under the underlying agreement as the State may request for a transition period up to 365 days from the effective date of termination or expiration of the underlying 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 provide such services, and perform transition and other related services under this Section (the "**Transition Period**"). During the Transition Period, Vendor will take all actions as may be necessary or requested by the State to accomplish a complete and timely transition, including but not limited to a full migration of all State data or information, including State of Iowa Confidential Information, from the Vendor to the State and/or to any contractor hired or utilized by the State to provide any replacement or similar services related to the services (the "**New Contractor**"). Vendor will use its best efforts to cooperate with the State and any New Contractor, and to fully comply with all requests of the State to effect a smooth and timely transition and to ensure there is no interruption of any services, information, or transactions provided or conducted through the 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 transition of the services, migration all State data or information, including State Confidential Information, and transfer of Vendor's responsibilities under the underlying agreement. Vendor will perform all transition services on an expedited basis, as determined by the State. During the Transition Period, the State agrees to pay to Vendor any fees to which Vendor would be entitled under the underlying agreement for services performed during such period; provided the underlying agreement was not terminated due to Vendor's breach of the agreement or for reasons related to the non-appropriation of funds as defined by the agreement, and Vendor continues to be in full compliance with all terms, conditions, provisions and requirements of the underlying agreement and these Security Terms. In the event the State's request for transition assistance does not require Vendor to continue providing all of the services under the underlying agreement, the Parties shall negotiate in good faith an equitable adjustment in the fees which are otherwise payable to Vendor for such services as the State requests the Vendor to provide.

6.8.2 Retention of State Data

Vendor agrees that in connection with any termination or expiration of the underlying agreement, Vendor shall not take any action to intentionally erase any State data or information for a period of at least 90 days, unless otherwise directed by the State in accordance with Section 6.7.2.

6.9 Background Checks

Vendor shall conduct nationwide criminal background checks and not utilize any staff, including contractors, or permit the staff of its employees, affiliates, subcontractors, agents, and other third parties acting on Vendor's behalf to fulfill the obligations of the underlying 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.

6.10 Vendor Personnel

Should the State be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor personnel assigned by Vendor to perform or provide services or deliverables, 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. If the State, in its sole discretion, determines Vendor personnel pose a potential security risk and notifies Vendor of such security risk in its request for replacement, Vendor shall immediately remove such individual; any replacement furnished by Vendor in connection with such a request may not perform or provide services or deliverables to the State unless and until the State gives its consent to Vendor's use of such replacement.

6.11 Non-disclosure and Separation of Duties

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

6.12 Security awareness training

Vendor shall promote and maintain an awareness of the importance of securing State Confidential Information among Vendor's employees, affiliates, subcontractors, agents, and other third parties acting on Vendor's behalf.

6.13 Security Disclosures, Audits, and Compliance

6.13.1 Compliance

Annually throughout the term of the underlying agreement, Vendor shall obtain and provide the State with the following, at no additional cost to the State: 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.

6.13.2 Security Audit by the State

During the Term, the State or its third party designee may, but is not obligated to, perform audits of Vendor's environment, including unannounced penetration and security tests, as they relate to the receipt, maintenance, use or retention of the State's Confidential Information. Any of the State'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.

6.13.3 Ongoing Security Testing/Compliance

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

6.13.4 Access to Security Logs and Reports

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