

## REQUEST FOR PROPOSAL

### RFP COVER SHEET

#### Administrative Information

<b>RFP Number</b>	RFP1419282016	<b>Title of RFP</b>	Online Resources for Test Preparation, Software Tutorials and Career Services	
<b>Agency</b>	Iowa Department of Education (DOE) by and through the Iowa Department of Administrative Services (DAS)			
<b>Number of years of the initial term of the contract</b>		3	<b>Number of possible annual extensions</b>	
		3		
<b>State Issuing Officer:</b> Kelli Sizenbach Phone: 515-725-2275 E-mail: kelli.sizenbach@iowa.gov				
<b>Mailing Address:</b> Iowa Department of Administrative Services Hoover State Office Building, Level 3 1305 East Walnut Street Des Moines, IA 50319-0105				
<b>PROCUREMENT TIMETABLE—Event or Action</b>			<b>Date/Time (Central Time)</b>	
State Posts Notice of RFP on TSB website			10/08/2018	
State Issues RFP			10/10/2018	
RFP written questions, requests for clarification, and suggested changes from Respondents due			10/18/2018 /3:00 P.M.	
Proposals Due			10/30/2018 /3:00 P.M.	
<b>Relevant Websites</b>				
Internet website where Addenda to this RFP will be posted <a href="http://bidopportunities.iowa.gov">http://bidopportunities.iowa.gov</a> <a href="#">2 CFR Part 200</a>				
Number of Copies of Proposals Required to be Submitted: 1 Original, 1 Digital, & 2 Copies				
<b>Firm Proposal Terms</b>				
The minimum number of days following the deadline for submitting proposals that the Respondent guarantees all proposal terms, including price, will remain firm is 120 Days.				

## SECTION 1 INTRODUCTION

### 1.1 Purpose

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

### 1.2 Definitions

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

**“Agency” or “Department”** means the Iowa Department of Education.

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

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

**“Terms and Conditions”** means the terms attached hereto and incorporated into this RFP.

**“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.

**“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 scope of work and specifications of the Contract. In determining whether a Contractor is a Responsible Contractor, the Agency may consider various factors including, but not limited to, the Contractor’s competence and qualifications to provide the goods or services requested, the Contractor’s integrity and reliability, the past performance of the Contractor and the best interest of the Agency and the State.

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

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

**“State”** means the State of Iowa, the Agency, 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 for the preparation of competitive Proposals. The RFP process is for the Agency's benefit and is intended to provide the Agency with competitive information to assist in the selection process. It is not intended to be comprehensive. Each Respondent is responsible for determining all factors necessary for submission of a comprehensive Proposal.

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

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

### 1.4 Objectives

The State of Iowa objectives are:

- Provide statewide, web-based access to information for all Iowa citizens.
- Increase subscription databases and digital resources.
- Offer career services, software tutorials and practice tests to academic and public libraries.

### 1.5 Background

Iowans are turning to libraries as centers for developing new job skills, changing careers or returning to school to complete advanced degrees. The State Library of Iowa, a division of the Iowa Department of Education, seeks a proposal for commercial, off-the-shelf online resources for Iowa citizens. These online resources should help prepare people to succeed in the workplace using online tools and resources that improve job skills and vocational test-taking abilities. This online resource will be available through public and academic libraries in Iowa and at Iowa Workforce Development Centers.

The Mission of the State Library of Iowa is to advocate for Iowa libraries and promote excellence and innovation in library services. One of the objectives in the Library's strategic plan is to increase statewide availability of subscription databases and other digital resources. The State Library of Iowa is collaborating with Iowa Workforce Development in order to better serve unemployed and under-employed Iowans with additional resources.

The 544 public libraries and the 77 academic libraries will be required to sign up through the State Library of Iowa for access to the product(s). These product(s) will have the potential to assist all 2,442,682 Iowans ages 15 and older.

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

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

**2.2      Restriction on Communication**

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

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

**2.3      Downloading the RFP from the Internet**

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

**2.4      Procurement Timetable**

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

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

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

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

**2.6 Amendment to the RFP**

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

**2.7 Amendment and Withdrawal of Proposal**

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

**2.8 Submission of Proposals**

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

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

**2.9 Proposal Opening**

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

**2.10 Costs of Preparing the Proposal**

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

**2.11 No Commitment to Contract**

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

**2.12 Rejection of Proposals**

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

- 2.12.1** The Respondent fails to deliver the Cost Proposal in a separate envelope.
- 2.12.2** The Respondent acknowledges that a mandatory specification of the RFP cannot be met.
- 2.12.3** The Respondent's Proposal changes a material specification of the RFP or the Proposal is not compliant with the mandatory specification of the RFP.
- 2.12.4** The Respondent's Proposal limits the rights of the Agency.
- 2.12.5** The Respondent fails to include information necessary to substantiate that it will be able to meet a specification of the RFP as provided in Section 4 of the RFP.
- 2.12.6** The Respondent fails to timely respond to the Agency's request for information, documents, or references.
- 2.12.7** The Respondent fails to include proposal security, if required.
- 2.12.8** The Respondent fails to include any signature, certification, authorization, stipulation, disclosure or guarantee as provided in Section 4 of this RFP.
- 2.12.9** The Respondent presents the information requested by this RFP in a format inconsistent with the instructions of the RFP or otherwise fails to comply with the specifications of this RFP.
- 2.12.10** The Respondent initiates unauthorized contact regarding the RFP with a State employee other than the Issuing Officer.
- 2.12.11** The Respondent provides misleading or inaccurate responses.
- 2.12.12** The Respondent's Proposal is materially unbalanced.
- 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, are merely a matter of form or format, do not change the relative standing or otherwise prejudice other Contractors, do not change the meaning or scope of the RFP, or do not reflect a material change in the specifications of the RFP. In the event the Agency waives or

permits cure of nonmaterial variances, such waiver or cure will not modify the RFP specifications or excuse the Respondent from full compliance with RFP specifications or other Contract specifications if the Respondent is awarded the Contract. The determination of materiality is in the sole discretion of the Agency.

**2.14 Reference Checks**

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

**2.15 Information from Other Sources**

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

**2.16 Verification of Proposal Contents**

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

**2.17 Proposal Clarification Process**

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

**2.18 Disposition of Proposals**

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

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

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

**2.20 Form 22 Request for Confidentiality**

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

**2.21 Copyright Permission**

By submitting a Proposal, the 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 Post Solicitation Debriefing**

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

**2.32 Appeals**

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

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

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

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

**RFP Number: RFP1419282016**

**RFP Title: Online Resources for Test Preparation, Software Tutorials and Career Services**

**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 in a separate Proposal and each will be evaluated separately.

### **3.2 Technical Proposal**

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

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

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

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

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

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

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

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

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

The Respondent shall provide the following general background information:

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

The Respondent must provide the following financial information:

- One of the following for the last three years:
  - 1). Audited financial statements
  - 2). Profit & loss statements
  - 3). Dun & Bradstreet Reports
  - 4). Tax returns
- A minimum of three (3) financial references.

**Exhibit 7 - 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 8 - 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 9 - Acceptance of Terms and Conditions**

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

**Exhibit 10 - 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 11 - 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 12 – 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 13 – Services**

Describe how Respondent can provide any or all of the services listed below. Services will need to be provided to public and academic libraries. The services will NOT be needed for K-12 schools or local Area Education Agencies.

**• Career Services**

- Describe the variety of online career and workplace related tools which will be available to users.
- Describe the availability of online books focused on career development and other job related topics.
- Describe how the service can be used by a variety of people, including different ages, different languages, and different levels of technological skill.
- Describe the ability of the service to specifically provide the following:
  - Resume and cover letter tips and templates
  - Career interest/aptitude resources
  - Tutorials, tips and techniques to complete the following:
    - Online job applications
    - College applications
    - Financial aid applications
    - Grant and scholarship application

- Store and retrieve work history online
- Resources for:
  - Career readiness
  - Job searching
  - Interviewing
  - Job offer negotiation

- **Test Preparation**

- Describe the vocational and educational practice tests that will be made available.
- Provide the Respondent's list of all the practice tests available.
- Describe the ability to provide the following practice tests:
  - United States Citizenship
  - ACT
  - SAT
  - Commercial Driver's License (CDL)
  - Test of Essential Academic Skills (TEAS)
  - High School Equivalency Test (HiSET)
  - General Education Diploma (GED)
  - National Council Licensure Examination (NCLEX)
  - Graduate Record Examination (GRE)
  - Graduate Nursing Admission Test (GNAT)
  - Law School Admission Test (LSAT)
  - Medical College Admission Test (MCAT)
  - Armed Services Vocational Aptitude Battery (ASVAB)
  - Praxis

- **Software Tutorials**

- Describe the languages available for software tutorials.
- Describe the ability for the user to save and return.
- Describe all formats available i.e. audio, video, downloaded software, etc.
- Describe how the tutorials can be utilized by adults of all levels, from beginner to advanced.
- Describe all of the software tutorials available. Specifically, provide information for the following software tutorials:
  - Microsoft Office
  - Facebook
  - Social Media
  - Email
  - Basic Computer Skills
  - Computer Programming
  - Typing

**Exhibit 14 – Technical Services**

- Describe how the system is kept secure.
- Describe the Respondent's disaster recovery plan.
- Describe if and how the Respondent can guarantee a 99.9% uptime.
- Describe methods of mobile access to the proposed solution.

- Include any information about usability on mobile devices and any associated mobile applications that are available.
- Describe how users will access the proposed system.
- Describe user verification and authentication.
- Describe the privacy policy of user's information.
- Describe the ability to provide a demonstration or trial access to the proposed solution.

#### **Exhibit 15 – Administration and Reports**

- Describe any reports generated by the system including all data items tracked and stored.
- Describe local system administrator permissions including but not limited to Add/Delete/Modify users, password access, and ability to modify building level accounts.
- Describe ability to report usage by public libraries (as a group), academic libraries (as a group), workforce centers (as a group), and by individual customer.
- Describe ability to export reports to CSV format.
- Describe marketing and publicity materials and support provided by the Respondent.
- Describe the availability of customizable branding for Iowa Library Services.
- Describe the availability of customizable branding for libraries.

#### **Exhibit 16 – Implementation Plan**

- Describe recommended implementation strategy including on-site coordination and support services, best practice consulting options and professional services. Identify any third party contractors 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).
- Provide an implementation schedule.

#### **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.
- Describe the ability to provide same day response to system outages and issues.
- Describe the ability to provide technical support to end users.
- Provide a schedule of when technical support can be reached. Include what means technical support can be reached (i.e. email, phone, etc.)

#### **Exhibit 18 - Training**

- Describe training provided by the Respondent for customers, site administrators, and state administrators. Training involving administrative features must include: administrative and security features, report creation, normal use, reporting features, statistical features, and technical support process.
- Describe end-user training resources provided such as web based tutorials, end-user documentation, tip-sheets, and other support materials.
- Describe training available to individual libraries.

**Exhibit 19 – Optional Features**

Provide detailed information for any optional items that may be available but have not been specifically requested the RFP. Include costs for these items in the Cost Proposal.

**Exhibit 20 – Performance-Based Criteria**

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

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

**Exhibit 21 - Warranty**

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

**Exhibit 22 - Addendums**

Provide signed copy of posted RFP addendums.

**Exhibit 23 - Request for Confidentiality**

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

**3.3 Cost Proposal**

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

- Provide all one time and recurring costs for system. Recurring costs should be provided for a 6- year period to cover initial term and potential extensions to contract.
- Equipment costs.
- Any other costs associated with proposed system.
- Pricing for Optional Features.

**3.3.1 Payment Methods**

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



**3.3.1.1 Credit card or ePayables**

The State of Iowa's Purchasing Cards (Pcards) and ePayable solution (EAP) are commercial payment methods utilizing the VISA credit card network. The State of Iowa will not accept price changes or pay additional fees if Contractor uses the Pcard or EAP payment methods. Pcard-accepting Contractors must abide by the State of Iowa's Terms of Pcard Acceptance, as provided in Section 6.6 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\\_authorization\\_form.pdf](https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/eft_authorization_form.pdf)

**3.3.1.3 State Warrant**

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

**3.3.2 Payment Terms**

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

<b>SECTION 4      SPECIFICATIONS</b>
--------------------------------------

**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      System Requirements**

**4.1.1**    The system must be web-based.

**4.1.2**    The system must be a commercial off the shelf system. It needs to be ready to roll out statewide immediately.

**4.1.3**    The system must be hardware neutral, no specialized or non-standard software or hardware can be required for basic operation necessary at end-user access device.

**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      Warranty**

Minimum of 5 year warranty on system to include hardware.

**4.5      Maintenance and Support Services**

**4.5.1**    Facility will perform operational maintenance to the system.

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

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

**4.6 Training**

Contractor will provide general user training and administrator training.

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

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

**5.2        Evaluation Committee**

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

**5.3        Technical Proposal Evaluation and Scoring**

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

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

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

**5.4        Cost Proposal Scoring**

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

The Cost Proposal for each Respondent will be evaluated in comparison with the other Cost Proposals received; however, the number of points possible will be proportional to each Respondent’s technical evaluation score.

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

Points Possible for Respondent =  
Technical Evaluation Points Received x Maximum Points in Cost Evaluation  
Technical Evaluation Points Possible

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.

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

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 by the Agency to the RFP through an amendment to the RFP in accordance with the provisions of the RFP, the Terms and Conditions attached hereto, the offer of the successful Respondent contained in its Proposal, and any other terms deemed necessary by the Agency. No objection or amendment by a Respondent to the provisions or terms and conditions of the RFP or the Terms and Conditions shall be incorporated into the Contract unless Agency has explicitly accepted the Respondent's objection or amendment in writing.

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

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

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

### 6.2 Contract Length

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

### 6.3 Insurance

The Contract will require the successful Contractor to maintain insurance coverage(s) in accordance with the insurance provisions of the 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 RFP1419282016 - 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 RFP1419282016 for an Online Resources for Test Preparation, Software Tutorials and Career Services 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,

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**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 RFP1419282016- 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 RFP1419282016.

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

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

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

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

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

Sincerely,

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

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

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

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

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

**1. Confidential Treatment Is Not Requested**

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

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

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

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

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

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

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

### Part 1 – No Confidential Information Provided

#### Confidential Treatment Is Not Requested

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

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

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

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

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

## Part 2 - Confidential Treatment is Requested

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

**NOTE:**

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

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

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

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

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

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

\_\_\_\_\_  
Company

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Attachment #4  
Response Check List**

RFP REFERENCE SECTION	RESPONSE INCLUDED	
	Yes	No
One (1) original, two (2) copies of the Bid Proposal and One (1) electronic copy on digital media.		
One (1) Public Copy with Confidential Information Excised (optional)		
<b>Technical Proposal</b>		
Exhibit 1 - Transmittal Letter		
Exhibit 2 - Executive Summary		
Exhibit 3 - Firm Proposal Terms		
Exhibit 4 - Respondent Background Information		
Exhibit 5 - Experience		
Exhibit 6 - Financial Information		
Exhibit 7 - Termination, Litigation, and Debarment		
Exhibit 8 - Criminal History and Background Investigation		
Exhibit 9 - Acceptance of Terms and Conditions		
Exhibit 10 - Certification Letter		
Exhibit 11 - Authorization to Release Information		
Exhibit 12 - Mandatory Specifications		
Exhibit 13 - Services		
Exhibit 14 – Technical Services		
Exhibit 15 – Administration and Reports		
Exhibit 16 – Implementation Plan		
Exhibit 17 - Service and Maintenance		
Exhibit 18 - Training		
Exhibit 20 – Performance-Based Criteria		
Exhibit 20 – Optional Services		
Exhibit 21 - Warranty		
Exhibit 22 - Addendums		
Exhibit 23 - Request for Confidentiality		
<b>Cost Proposal</b>		

**Attachment #5**  
**Terms and Conditions**  
**State of Iowa Customer TOS Terms**

Agency agrees to Contractor's standard contract documents governing access to or use of certain Software or Services Contractor supplies hereunder (typically referred to as **"Terms of Service"** or **"TOS"** for Software, platforms, infrastructure, or other similar Information Technology delivered as a Service (**"Cloud Services"**)); provided, however, that, to the extent of any conflict or inconsistency between this State of Iowa Customer TOS Terms (**"State of Iowa TOS"**) and Contractor's standard contract documents or TOS (collectively referred to herein as **"Contractor TOS"**, the State of Iowa TOS shall prevail. The term(s) **"customer," "You," "you," "Customer,"** or **"customer,"** or other like terms as used in any Contractor TOS shall mean the State or its employees, officers, board members, agents, representatives, officials, or other like individuals. The term(s) **"we," "us,"** and/or **"our,"** or other like terms as used in any Contractor TOS shall mean Contractor or its employees, officers, board members, agents, representatives, officials, or other like individuals. The State and Contractor may be referred to herein individually as a **"Party,"** or collectively as the **"Parties"**; provided, however, that where the context clearly requires, the term **"Party"** or **"Parties"** may refer to or include the Authorized State User utilizing the Services or Documentation provided hereunder.

**1. Defined Terms**

Capitalized terms not defined herein are as defined in the RFP. In addition to any other terms that may be defined elsewhere in this State of Iowa TOS, the following terms shall have the following meanings:

**"Agreement,"** unless the context requires otherwise, means the collective documentation memorializing the terms of the agreement, including but not limited to this State of Iowa TOS, Contractor TOS, the RFP, Contractor's Proposal and all other attachments hereto.

**"Application Services"** means the Internet enabled, web-based application, and corresponding online resources provided by Contractor and designed to help prepare people to succeed in the workplace using online tools and resources that improve job skills and vocational test-taking abilities, as more fully described and defined in the RFP and Contractor's Proposal.

**"Authorized Contractors"** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by the State or any State Authorized User to use, maintain, support, modify, enhance, host, or otherwise assist the State or any State Authorized User with the Application Services provided hereunder.

**"Confidential Information"** means, subject to any applicable federal, State, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party (**"Disclosing Party"**) to the other Party (**"Receiving Party"**) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public



domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

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

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

**“Customer Data”** means all information, data, materials, or documents (including Confidential Information of or belonging to the State, any State Authorized User(s), or any User(s)) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from the State, any State Authorized User(s), including any Authorized Contractors of either of the foregoing, or any Users related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Contractor in connection with the Applications Services provided hereunder and all originals and copies of any the foregoing.

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

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

**“Governmental Entity”** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity includes Participating Agencies, agencies, independent agencies, the Executive Branch, Judicial Branch, Legislative 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.

**“Proposal” or “Contractor’s Proposal”** means Contractor’s response to the RFP.

**“Purchasing Instrument”** means Documentation issued by the State to Contractor for the purchase of Application Services and other related Services for use by the State, State Authorized Users, and Users under this Agreement, including a **“Purchase Order”** or **“Statement of Work”** executed hereunder, regardless of form, and which the Parties may identify the specific number of units to be purchased and any other requirements deemed necessary by the State, such as compensation and delivery dates.

**“Request for Proposal” or “RFP”** means the Request for Proposal for Online Resources for Test Preparation, Software Tutorials and Career Services, including any attachments or amendments thereto.

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

**“Services”** may include:

- 1.1.1. The Application Services; and/or
- 1.1.2. Any other services included within the Scope of the RFP and Proposal.

**“State Authorized Users”** means the State, the Agency, and all state agencies, boards, and commissions, and any political subdivisions making purchases from the Contract as permitted by the RFP, any other Governmental Entity as may be later designated by the State in its sole discretion and communicated to Contractor in writing, and any officers, directors, employees, agents, or Authorized Contractors of any of the foregoing. State Authorized Users shall expressly include the State Library of Iowa and the 544 public libraries and the 77 academic libraries within the State of Iowa and any officers, directors, employees, agents, or Authorized Contractors of any of the foregoing.

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

**“Users”** means any end users of the Application Services, including but not limited to any patrons of State Authorized Users using the online tools and resources that improve job skills and vocational test-taking abilities, as more fully described and defined in the RFP and Contractor’s Proposal or any employees, officers, board members, agents, representatives, officials, volunteers, employees of Authorized Contractors, or other like individuals of any State Authorized Users.

## 2. **Term**

The initial term of the Agreement shall begin on the date of last signature below and end on the date that is one year after the date of last signature, below (the **“Initial Term”**), unless terminated earlier in accordance with the terms of this Agreement. After expiration of the Initial Term, the State shall have the option to extend/renew this Agreement for up to five (5) additional one-year renewal terms (each a **“Renewal Term”**). The decision to extend the Agreement will be at the sole option of the State and may be exercised by the State by providing

written notice to Contractor at least thirty (30) days prior to the end of a Term. The Initial Term and any Renewal Terms are referred to herein collectively as the **“Term.”** Contractor shall provide the State of Iowa with at least ninety (90) days prior written notice of the end of the Initial Term and each Renewal Term.

### **3. Services**

#### **3.1. Application Services**

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

#### **3.2. Third Party Intellectual Property**

Any Third Party Intellectual Property shall be deemed part of and included in the definition of the “Application Services” and/or “Services,” as applicable, and be subject to all terms and conditions of this Agreement relating to the Application Services and/or Services, as applicable. The State of Iowa shall not be bound by any terms and conditions relating to the Third Party Intellectual Property unless such terms and conditions are expressly identified by Contractor and agreed to by the State in writing.

#### **3.3. Purchasing Instruments**

Contractor shall commence, complete, and deliver all work and provide all Services as described in the RFP and Proposal in accordance with the deadlines, timelines, terms, conditions, promises, and any other requirements set forth in this Agreement, the RFP, Contractor’s Proposal, and any Purchasing Instrument(s) that may be executed hereunder from time to time by the Parties.

### **4. Payment Terms**

The State shall pay all undisputed amounts set forth in approved invoices in arrears and in conformance with Iowa Code Section 8A.514 and 11 Iowa Admin. Code 41.1(2) and, solely to the extent not inconsistent with the foregoing, in accordance with the terms and conditions set forth in the RFP, Contractor’s Proposal, and any applicable Purchasing Instrument executed hereunder. The State may pay in less than sixty (60) days, as provided in Iowa Code Section 8A.514 and 11 Iowa Admin. Code 41.1(2). However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code Section 8A.514 or 11 Iowa Admin. Code 41.1(2). Notwithstanding, the State may, in its sole discretion, elect to prepay fees for Services in accordance with applicable laws, rules, policies, and procedures, including State of Iowa Accounting Policies and Procedures, *available at:* <https://das.iowa.gov/state-accounting/sae-policies-procedures-manual>.

### **5. Confidentiality**

Notwithstanding anything in any the Agreement or any other agreement to the contrary, any duties or obligations as it relates to any terms and conditions requiring any Governmental Entity to maintain Contractor’s, Contractor’s Contractor’s, or Contractor Personnel’s information in confidence shall be subject to and limited by applicable State laws, rules and regulations, including, without limitation, Iowa Code Chapter 22, and fair information practices rules. The applicable Governmental Entity shall not be in breach of this Agreement or any other agreement

for any failure to comply with any provision relating to confidential information if the applicable Governmental Entity is complying with or attempting to comply with any such laws, rules, and regulations in so doing. In addition, and notwithstanding anything in this Agreement or any other agreement to the contrary, a Governmental Entity may disclose Contractor's, Contractor's Contractor's, or Contractor Personnel's Confidential Information:

- 5.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative or regulatory processes;
- 5.2. Pursuant to any applicable laws, rules, or regulations;
- 5.3. If the applicable Governmental Entity reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
- 5.4. If the applicable Governmental Entity determines Contractor, Contractor's Contractor, or Contractor Personnel has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any Contractor's, Contractor's Contractor's, or Contractor Personnel's Confidential Information as permitted above, the applicable Governmental Entity shall provide reasonable notice to Contractor of the circumstances giving rise to such disclosure.

The applicable Governmental Entity shall remain the sole and exclusive owner of any and all Customer Data supplied or provided by it, directly or indirectly, to Contractor, Contractor's Contractor(s), or Contractor Personnel in connection with the Agreement or any other agreement, including by or through the use of any Application Services. Each Party acknowledges and agrees that due to the unique nature of confidential information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or Third Parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of any provisions relating to Confidential Information will constitute a material breach of the Agreement between the Parties and be grounds for immediate termination in the exclusive discretion of the non-breaching Party. Any/all provisions of the Agreement relating to Confidential Information shall survive termination/expiration of the Agreement.

## 6. **Limitation of Liability**

If any Contractor TOS or any other agreement contains any provision(s) limiting or attempting to limit Contractor's, Contractor's Contractor's, or Contractor Personnel's liability or providing for sole and exclusive remedies, any such provision(s) shall be **NULL AND VOID**.

## 7. **Indemnification**

### 7.1. **Publisher**

Notwithstanding anything in this Agreement or any other agreement to the contrary, any right or obligation of any Contractor, Contractor's Contractor, or Contractor Personnel to defend any Governmental Entity or its employees, officers, board members, agents, representatives, officials, or other like individuals shall be modified/amended solely to include an obligation to indemnify and hold harmless the

applicable Governmental Entity and its employees, officers, board members, agents, representatives, officials, or other like individuals. For the avoidance of doubt, except as otherwise provided herein, Contractor, Contractor's Contractor, or Contractor Personnel shall have no right to defend any Governmental Entity or its employees, officers, board members, agents, representatives, officials, or other like individuals or be deemed to have been granted settlement authority as it relates to any claims made against any Governmental Entity or its employees, officers, board members, agents, representatives, officials, or other like individuals.

**7.2. State of Iowa**

Notwithstanding anything in this Agreement or any other agreement to the contrary, no Governmental Entity or any of their employees, officers, board members, agents, representatives, officials, or other like individuals, shall have any obligation to defend, indemnify, or hold harmless Contractor, Contractor's Contractor(s), or Contractor Personnel for any reason.

**8. Choice of Law/Forum**

Notwithstanding anything in this Agreement or any other agreement to the contrary, 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 the same, 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. Contractor 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. Any provision in this Agreement calling for arbitration or any other form of alternative dispute resolution shall be **NULL and VOID**.

**9. Privacy/Security Terms and Conditions**

**9.1. Data Ownership**

All Customer Data shall be and remain the sole and exclusive property of the applicable Governmental Entity.

**9.2. Vendor's access to and use of Customer Data**

The CSP shall not use any Customer Data for any purpose other than fulfilling the CSP's express obligations and duties under the TOS, in accordance with the terms and conditions set forth therein, and any applicable laws, rules, and regulations.

**9.3. Data Protection**

The CSP shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, the CSP represents, warrants, covenants, and otherwise promise that:

**9.3.1.** As it relates to any Cloud Services that such Cloud Services will perform in accordance with applicable control standards and frameworks as

detailed on any CSP website, including but not limited to any webpage(s) related to “compliance,” as it exists at the time of each purchase.

- 9.3.2.** All Customer Data shall be encrypted at rest and in transit with controlled access. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, the CSP is responsible for encryption of Customer Data in their possession. Additionally, the CSP shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless the applicable Governmental Entity approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.
- 9.3.3.** Storage of Customer Data at rest and all backups shall occur solely in the continental United States of America.
- 9.3.4.** The CSP will not access, store, process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.
- 9.3.5.** During the term, a Governmental Entity or its Authorized Contractor(s) may perform security audits/scans of the CSP’s environment, including unannounced penetration and security tests. Any Governmental Entity’s regulators (and any federal agencies providing grant funds used to pay for such Deliverables, in whole or in part) shall have the same right upon request. The CSP and Vendor Contractors agree to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

#### **9.4. Security Logs**

As it relates to any Cloud Services, the CSP and Vendor Contractors shall provide security logs and reports to a Governmental Entity or its Authorized Contractors in a mutually agreeable format upon request. Such reports shall include at least latency statistics, user access summaries, user access IP address summaries, user access history and security logs for all Customer Data.

#### **9.5. Backups**

As it relates to any Cloud Services, the CSP is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within two (2) hours at any point in time. Additionally, the CSP shall store a backup of Customer Data in an off-site “hardened” facility no less than daily, maintaining the security of Customer Data, and consistent with the security requirements set forth in this Section.

#### **9.6. Import and Export of Customer Data**

To the extent Customer Data is stored, retained, or otherwise maintained in electronic format in connection with any Cloud Services, the applicable Governmental Entity or its Authorized Contractors shall have the ability to import or export data or information, including Customer Data, in whole or in part to or from such Cloud Services, at no charge, and in such formats as may be acceptable to the Governmental Entity, without

interference from the CSP, Vendor Contractors, or Vendor Personnel. In the event a Governmental Entity is unable to successfully import or export Customer Data in whole or in part, the CSP or Vendor Contractor shall assist the Governmental Entity in doing so at no charge. As it relates to the export of such data and information, the CSP or Vendor Contractor shall provide to or ensure the applicable Governmental Entity has obtained an export of any requested Customer Data within a timeframe mutually agreed between the Parties in the format specified by the Governmental Entity.

**9.7. Retention/Return/Destruction of Customer Data**

Upon termination or expiration of any Services, the CSP may be required to promptly return or destroy, at the applicable Governmental Entity's sole option, all Customer Data, and provide a notarized written statement to the applicable Governmental Entity certifying that all Customer Data under or in the CSP's, control or possession has been delivered to the applicable Governmental Entity or destroyed, as requested by the applicable Governmental Entity. To the extent the CSP is required to destroy Customer Data, such Customer Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. The CSP agrees that in connection with any termination or expiration of any services, the CSP shall not take any action to intentionally erase any Customer Data without first providing prior notice to and consent from the applicable Governmental Entity in writing.

**9.8. Personnel Safeguards**

**9.8.1. Background Checks**

**9.8.1.1. Floor**

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

**9.8.1.2. Additional Screening**

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

mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.

- 9.8.1.3.** The CSP shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor, directly or indirectly, the CSP, or a Governmental Entity or its Authorized Contractor.

**9.8.2. Security Awareness Training**

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

**9.8.3. Separation of Job Duties**

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

**9.9. Security Breaches**

**9.9.1. Reporting**

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

**9.9.2. Investigations in Response to Actual or Suspected Breach**

The CSP and Vendor Contractors agree, at their sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the applicable Governmental Entity and OCIO in resolving and mitigating any damage from such actual or suspected Security Breach at the CSP's sole cost. At no additional cost to the applicable Governmental Entity or the State of Iowa, the CSP and Vendor Contractor will fully cooperate with the applicable Governmental Entity, OCIO, and the Authorized Contractors of either of the foregoing in investigating such actual or suspected Security Breach, including reviewing and assisting in reviewing system, application, and access logs, conducting and assisting in conducting forensic audits of relevant systems, imaging and assisting in imaging relevant media, and making personnel available for interview. On notice of any actual or suspected Security Breach, the CSP and Vendor Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. The CSP and Vendor Contractor will deliver to the



applicable Governmental Entity and OCIO a root cause assessment and future incident mitigation plan, and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. The CSP agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless the applicable Governmental Entity specifically requests the CSP do so in writing.

**9.9.3. Additional Remedies in the Event of Actual Breach**

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

**9.10. Ancillary Agreements and Non-Disclosure Agreements**

The CSP or Vendor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to an applicable Governmental Entity making purchases hereunder, such as a Business Associate Agreement ("BAA") or Criminal Justice Information System ("CJIS") Security Addendum, or any other non-disclosure or confidentiality agreements in connection with this Agreement or any related agreement deemed necessary by the applicable Governmental Entity ("**Ancillary Agreement(s)**").

- 9.11.** The CSP shall include the terms and conditions in this Section in all of its contracts, subcontracts, or other agreements with the CSP, and shall remain responsible to applicable Governmental Entities for all of the obligations or liabilities set forth herein or related to this Section even if it fails to do so.

**10. Compliance with Law**

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

- 10.1.** Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State's written request, the CSP shall submit to the State a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
- 10.2.** Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
- 10.3.** Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 10.4.** Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 10.5.** Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.0, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.

Contractor shall take such steps as necessary to ensure Contractor's Contractors and Contractor's Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Agreement or any other agreement to the contrary, Contractor's failure to fulfill any requirement set forth in this Section shall be regarded as a material breach and the State may cancel, terminate, or suspend, in whole or in part, this Agreement or any Purchasing Instrument executed hereunder. In addition, as it relates to the breach of representations, warranties, and obligations of Section 11.1, the State may declare Contractor ineligible for future State contracts in accordance with authorized procedures or Contractor may be subject to other sanctions as provided by law or rule.

**11. Conflicts of Interest**

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

**12. Use of Third Parties**

All subcontracts related to the Services provided hereunder or this Agreement shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the State may deem necessary. All subcontracts shall contain provisions which allow the State to access the subcontractor's books, documents, and records and for inspections of work, as required of Contractor herein. No subcontract or delegation of work shall relieve or discharge Contractor from any obligation, provision, or liability under this Agreement. Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any downstream Contractor's Contractors or Contractor Personnel. Any action of a Contractor's Contractor or Contractor Personnel, which, if done by the Contractor, would constitute a breach of this Agreement, shall be deemed a breach by Contractor and have the same legal effect.

**13. Independent Contractors**

Contractor is an independent contractor of the State. No Contractor Personnel shall be considered employees of any Governmental Entity in connection with the Services provided in connection with this Agreement for any reason.

**14. Not a Joint Venture**

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

**15. No Third Party Beneficiaries**

There are no third-party beneficiaries to this Agreement, except the State Authorized Users and Users accessing and using the Application Services provided pursuant to this Agreement.

**16. Severability**

If any provision of this Amendment 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.

**17. Captions and Terms**

Unless the context 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."

**18. Multiple Counterparts**

This Agreement (including any Contractor TOS), or any Purchasing Instruments executed hereunder, may be executed in several counterparts, all of which when taken together shall constitute an Agreement between the Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement, Contractor TOS, or Purchasing Instrument so executed shall constitute an original.

**19. Entire Agreement**

This Agreement, as to its subject matter, exclusively and completely states the rights, duties and obligations of the Parties and supersedes all prior and contemporaneous representations, letters, proposals, discussions and understandings by or between the Parties. This Agreement, and any Purchasing Instruments executed hereunder, may only be amended in a writing signed by both Parties. With the exception of any Contractor TOS, which must be provided to the State in writing and attached hereto, in particular, no shrink-wrap, click-wrap, browser-wrap, privacy policies, online terms or other terms and conditions or agreements ("**Additional Terms**") provided with, related to, or incorporated in any Services, Documentation, or the Application Services shall be binding on the State, any State Authorized Users, or Users, even if use of such items requires an affirmative "acceptance" of those Additional Terms before access or use to any Services, Documentation, or the Application Services is permitted. All Additional Terms shall be of no force or effect and shall be deemed rejected by the State in their entirety.

**20. RFP and Contractor's Proposal**

The RFP and Contractor's Proposal, together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth herein; provided, however, that none of Contractor's exceptions, objections or proposed modifications respecting the RFP or any terms associated therewith (collectively "**Contractor Exceptions**") shall be incorporated therein unless expressly set forth herein. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Contractor, except that any Contractor Exceptions shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of the Parties, unless expressly stated herein. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal (excluding any Contractor Exceptions that are not expressly made a part of this Agreement). The references to the Parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the Parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Contractor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered or stated in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the State shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the State.

**21. Default and Termination**

**21.1. Termination for Cause by the State**

The State may terminate this Agreement or a Purchasing Instrument upon written notice of Contractor's breach of any material term, condition or provision of this Agreement or the applicable Purchasing Instrument, if such breach is not cured within the time period specified in the State's notice of breach or any subsequent notice or correspondence delivered by the State to Contractor, provided that cure is feasible. In addition, the State may terminate this Agreement or an applicable Purchasing Instrument effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

- 21.1.1.** Contractor, directly or indirectly, furnished any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete;
- 21.1.2.** Contractor or Contractor's Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 21.1.3.** Dissolution of Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor;
- 21.1.4.** Contractor terminates or suspends its business;
- 21.1.5.** Contractors' authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;
- 21.1.6.** Contractor or Contractor's Contractor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations, standards, or orders when performing within the scope of this Agreement;
- 21.1.7.** The State determines or believes Contractor has engaged in conduct that has or may expose the State to material liability;
- 21.1.8.** Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
- 21.1.9.** Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder, or entity having or owning a controlling interest in Contractor:
  - 21.1.9.1.** Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
  - 21.1.9.2.** Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
  - 21.1.9.3.** Making an assignment for the benefit of creditors;
  - 21.1.9.4.** Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in

connection with Contractor's performance of its obligations under this Agreement; or

**21.1.9.5.** Taking any action to authorize any of the foregoing.

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

**21.2. Termination for Cause by Contractor**

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

**21.3. Termination Due to Lack of Funds or Change in Law**

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

**21.3.1.** The legislature, governor, or other applicable governing body fail in the sole opinion of the State to appropriate funds sufficient to allow the State, directly or indirectly, to either meet its obligations under this Agreement or an applicable Purchasing Instrument or to operate as required and to fulfill its obligations under this Agreement or the applicable Purchasing Instrument; or

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

**21.3.3.** If the State's or any Authorized User's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

**21.3.4.** If the State's or any Authorized User's duties, programs, or responsibilities are modified or materially altered; or

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

**21.4. Limitation of Payment Obligations**

In the event of a termination of this Agreement or a Purchasing Instrument for any reason (except for termination by the State pursuant to Section 21.1 (Termination for Cause by the State)), the State shall pay only those amounts, if any, due and owing to Contractor for Services that have actually and previously been provided by Contractor up to and including the date of termination of this Agreement or the applicable

Purchasing Instrument and for which the State is otherwise obligated to pay pursuant to this Agreement; provided however, that the State's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section in no way limits the rights or remedies available to the State and shall not be construed to require the State to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, the shall not be liable, under any circumstances, for any of the following:

- 21.4.1.** The payment of unemployment compensation to Contractor Personnel;
- 21.4.2.** The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
- 21.4.3.** Any costs incurred by Contractor in its performance of the Agreement, including startup costs, overhead or other costs associated with the performance of the Agreement;
- 21.4.4.** Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;
- 21.4.5.** Any taxes Contractor may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes or property taxes.

**21.5. Contractor's Termination or Expiration Duties**

Upon receipt of notice of termination or upon expiration of the Agreement, and solely to the extent requested by the State, Contractor shall:

- 21.5.1.** Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the State may require;
- 21.5.2.** Immediately cease using and return to the applicable Governmental Entity any property, including Customer Data, or materials, whether tangible or intangible, provided by a Governmental Entity to Contractor hereunder;
- 21.5.3.** Immediately return to the State any payments made by the State for Services that were not rendered or provided by Contractor;
- 21.5.4.** Immediately deliver to the State any and all property for which the applicable Governmental Entity has a property interest and has made payment (in whole or in part) that is in the possession of or under the control of Contractor, Contractor Contractors, or Contractor Personnel in whatever stage of development or form at the time of such termination.

**21.6. Survival**

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

- 21.6.1.** The Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections:

- 21.6.1.1. 4 (Payment Terms);
- 21.6.1.2. 5 (Confidentiality);
- 21.6.1.3. 6 (Limitation of Liability);
- 21.6.1.4. 7 (Indemnification);
- 21.6.1.5. 8 (Choice of Law/Forum);
- 21.6.1.6. 9 (Security/Privacy, Business Continuity, and Disaster Recovery);
- 21.6.1.7. 12 (Use of Third Parties);
- 21.6.1.8. 16 (Severability);
- 21.6.1.9. 17 (Captions and Terms);
- 21.6.1.10. 20 (RFP and Contractor’s Proposal);
- 21.6.1.11. 21 (Default and Termination).

21.6.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

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

**State of Iowa**  
 (“State”)

**[Name]**  
 (“Contractor”)

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_