



**REQUEST FOR PROPOSAL
RFP COVER SHEET**

TITLE OF RFP:	ICSAC Community Center Web Portal	RFP#:	1109284245
Lead Agency:	Iowa Dept of Administrative Services (DAS), GSE Procurement Services		
On Behalf Of Participating Agency:	Iowa College Student Aid Commission (ICSAC)	Available to Political Subdivisions?	No
State seeks to purchase:	ICSAC seeks a web-based "community center". The Iowa Statewide Community Center Web Portal will provide a centralized location for system users to access ICSAC and other State agency programs, products, services, and information.		
Term of the contract:		Six Years	
Beginning Date of Contract:	By May 11, 2009	Ending Date:	June 30, 2015
State Issuing Officer:			
Name:	Laurie Hoing, Purchasing Agent III, CPPB		
Mailing Address:	Iowa Department of Administrative Services, GSE Procurement Services Hoover Building, Level A, 1305 E Walnut Street, Des Moines, IA 50319		
Phone / Fax:	515-281-0656 / 515-725-0137		
E-mail:	laurie.hoing@iowa.gov		
PROCUREMENT TIMETABLE—Event or Action:			Date
State Posts Notice of RFP on TSB website :			March 9, 09
State Issues RFP at http://bidopportunities.iowa.gov/ :			March 11, 09
Optional Letters of Intent to Bid from Vendors due by:			March 25, 09
Written questions, requests for clarification from Vendors due by:			March 25, 09
Lead Agency's written response to questions, requests for clarifications:			April 1, 09
Bid Proposals Due No Later Than 3:00 P.M. Central Time on:			April 15, 2009
Relevant Websites:		Web-address:	
Internet website where Addenda will be posted:		http://bidopportunities.iowa.gov/	
Number of Copies of Bid Proposals Required to be Submitted:		1 original, 1 copy on CD, and 7 paper copies	
Bid Proposal Security, if any:			None
Firm Bid Proposal Terms -Minimum Number of Days following the deadline for submitting bid proposals that the Vendor guarantees all bid proposal terms, including price, will remain firm:			120 Days

An MS Word version of this PDF file is available upon request to the Issuing Officer.

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SECTION 1 INTRODUCTION

1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified providers to provide the goods and/or services identified on the RFP cover sheet and described further in Section 4 of this RFP to the Lead Agency and any Participating Agencies identified on the RFP cover sheet. The Lead Agency intends to award a contract beginning and ending on the dates listed on the RFP cover sheet, and the Lead Agency may extend the contract(s) for up to the number of annual extensions identified on the RFP cover sheet at the sole discretion of the Participating Agency. Any contract(s) resulting from the RFP shall not be an exclusive contract however.

1.2 Definitions

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

- 1.2.1 **“Proposal”** means the Vendor’s bid or proposal submitted in response to the RFP.
- 1.2.2 **“Buyer”** means the individual state agency or political subdivision making a purchase pursuant to the Resulting Contract.
- 1.2.3 **“Contract” or “Resulting Contract”** means the contract(s) entered into with the successful Vendor(s) as described in section 6.1.
- 1.2.4 **“Contractor”, “Vendor” or “Service Provider”** means (as the context requires) either vendors submitting Bid Proposals in response to this RFP or the provider of the goods and services under the Resulting Contract.
- 1.2.5 **“Lead Agency”** means the agency identified on the RFP cover sheet as Lead Agency and is the chief coordinator and issuer of the RFP. Lead Agency will also execute the Resulting Contract.
- 1.2.6 **“Purchase Instrument”** means the documentation issued by the State to the Vendor for a purchase of goods and/or services in accordance with the terms and conditions of the Contract. It may include an identification of the items to be purchased, the delivery date and location, the address where the Vendor should submit the invoices, and any other requirements deemed necessary by the State. Any pre-printed contract terms and conditions included on Vendor’s forms or invoices shall be null and void.
- 1.2.7 **“Responsible Vendor”** means a Vendor that has the capability in all respects to perform the requirements of the Resulting Contract. In determining whether a Vendor is a Responsible Vendor, Lead Agency may consider various factors including, but not limited to, the Vendor’s competence and qualifications to provide the goods or services requested, the Vendor’s integrity and reliability, the past performance of the Vendor relative to the quality of the goods or services offered by the Vendor, the proposed terms of delivery, and the best interest of Lead Agency and Participating Agencies.
- 1.2.8 **“Responsive Bid Proposal”** means a Bid Proposal that complies with each of the provisions of this RFP.
- 1.2.9 **“RFP”** means this Request for Proposals and any addenda hereto.
- 1.2.10 **“Participating Agency” or “Participating Agencies”** means the agency or agencies identified on the RFP cover sheet as Participating Agencies and any other agency that decides to utilize the Resulting Contract.

1.2.11 “Portal” means a web-based integration of processes, information repositories, and software applications and communication capabilities in support of a common set of goals targeting a group of clients.

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

1.3 Overview of the RFP Process

Vendors will be required to submit their responses in hardcopy to the Issuing Officer. It is Lead Agency’s intention to evaluate proposals from all Responsible Vendors that submit timely Responsive Bid Proposals, and to award the contract in accordance with RFP Sections 2 and 5 after being authorized by the Participating Agency’s directors.

1.4 Background Information

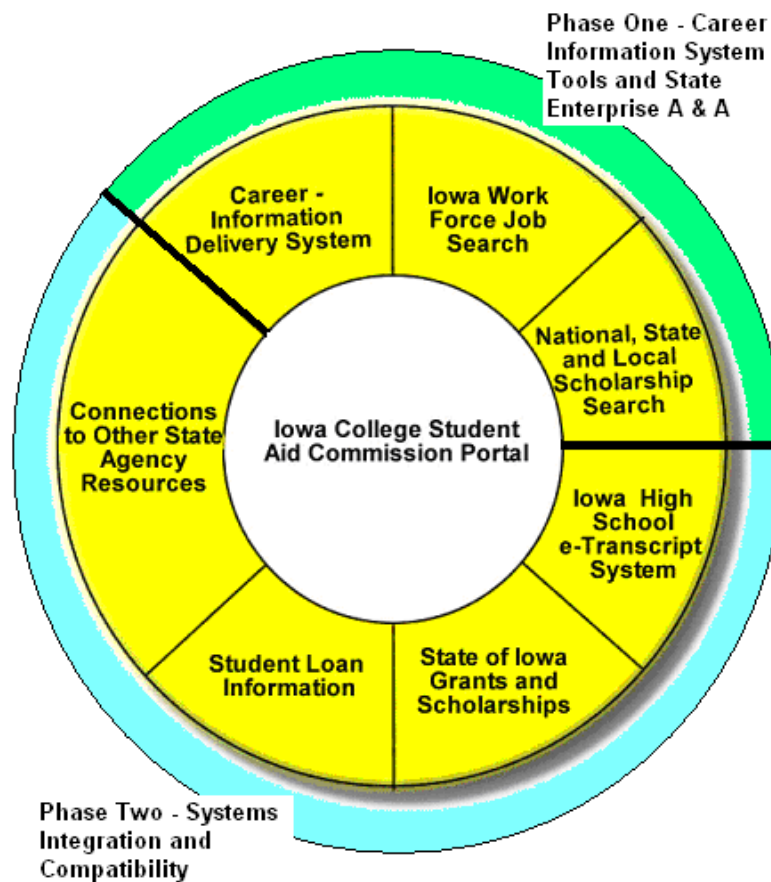
The RFP and the RFP process as presented herein is consistent with the formal competitive selection procedures provided for in [Iowa Administrative Code 11- Chapters 105, 106, 107 and 108](#).

The Participating Agency (ICSAC) is an agency of Iowa government and is responsible for a continuum of services to support Iowa students and families as they explore and finance educational opportunities beyond high school. The Participating Agency is the designated Federal Family Education Loan Program (FFELP) guarantor for the state and guarantees over \$679 million in Federal Stafford and PLUS loans, which are low-cost student loans to help pay the cost of higher education. The Participating Agency also oversees school and lender participation in federal student loan programs and administers state-funded scholarships, grants, work-study opportunities and loan forgiveness programs, totaling over \$64 million annually. The Participating Agency web address is www.iowacollegeaid.gov.

The Iowa College Student Aid Commission (Participating Agency) seeks a single Service Provider (“Vendor” or “Contractor”) to provide a Statewide Community Center Web Portal for the State of Iowa. The statewide community-centered web system (Web System) shall provide a centralized location for system users to access Lead Agency’s programs, products, services, and information. These services include, but are not limited to, financial aid assistance, career information and decision making, college awareness, college planning, and financial literacy. The career information and decision making component will satisfy requirements of Senate File 2216, (Exhibit B), and will be designated as the Iowa state-wide career information and decision making system. The purpose of this Request for Proposals (RFP) is to solicit vendor proposals to implement the Web System in Two (2) phases as outlined below.

Implementation Schedule:

Deliverables as identified in RFP Section 4		Completion
Phase 1 – Implementation and Integration	Career Information System Tools	August 3, 2009
	State Enterprise A&A	
Phase 2 – System Integration and Compatibility	ICSAC Scholarship and Grant System	January 2, 2010
	Other State Agency Tools	
	ICSAC Data Warehouse	
	Iowa Dept of Education e-Transcripts	
	State Enterprise e-Payment	
	Iowa Student Information Systems	
	Other Secondary or Postsecondary Data Systems	



The Participating Agency anticipates that the term of any resulting contract shall be for a six (6) year period and shall begin no later than May 11, 2009. The State shall have the ability to terminate the contract as prescribed in this RFP.

Note: A previous RFP (RFP# 12-17-2008) for these services had been issued 12-17-2009 by ICSAC which was ultimately canceled by ICSAC on 02 - 20 - 2009 and not awarded after ICSAC rejected all proposals received due to additions to the RFP.

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 the end of the 'Appeal Period' provided in Section 2.31.

2.2 Restriction on Communication

From the issue date of this RFP until the end of the 'Appeal Period' provided in Section 2.31, Vendors 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 2.7. Verbal questions related to the interpretation of this RFP will not be accepted. Vendors will be disqualified if they contact any state employee or agency board member other than the issuing officer about the RFP except that Vendors may contact the State Targeted Small Business Office on issues related to the preference for Targeted Small Businesses <https://dia.iowa.gov/tsb>.

2.3 Downloading the RFP from the Internet

The RFP and all Addenda will be posted at the website listed on the RFP cover sheet. The Vendor is advised to check the website periodically for Addenda to this RFP, particularly if the Vendor downloaded the RFP from the Internet as the Vendor may not automatically receive Addenda. It is the Vendor'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; however, Lead Agency reserves the right to change the dates. If Lead Agency changes any of the deadlines for Vendor submissions, Lead Agency will issue Addenda to the RFP.

2.5 Reserved**2.6 Vendors' Conference - None****2.7 Questions, Requests for Clarification, and Suggested Changes**

Vendors are invited to submit written questions and requests for clarifications regarding the RFP. Vendors may also submit suggestions for changes to the requirements of this RFP. The questions, requests for clarifications, or suggestions must be in writing and received by the Issuing Officer before the date and time listed on the RFP cover sheet. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, the page and section number(s) must be referenced. Written responses to questions, requests for clarifications, or suggestions will be sent on or before the date listed on the RFP cover sheet to Vendors who received RFP's. Lead Agency's written responses will be considered part of the RFP. If Lead Agency decides to adopt a suggestion that modifies the RFP, Lead Agency will issue Addenda to the RFP. Lead Agency assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP.

2.8 Amendment to the RFP

Lead Agency reserves the right to amend the RFP at any time using an Addendum. The Vendor shall acknowledge receipt of Addenda in its Bid Proposal. If the Addenda occur after the closing date for receipt of Bid Proposals, Lead Agency may, in its sole discretion, allow Vendors to amend their Bid Proposals in response to Lead Agency's Addenda if necessary.

2.9 Amendment and Withdrawal of Bid Proposal

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

2.10 Submission of Bid Proposals

The Lead Agency must receive the Bid Proposal at the Issuing Officer's address identified on the RFP cover sheet before the "Bid Proposals Due" date listed on the RFP cover sheet. **This is a mandatory requirement and will not be waived by the Lead Agency. Any Bid Proposal received after this deadline will be rejected and returned unopened to the Contractor.** Contractors mailing Bid Proposals must allow ample mail delivery time to ensure timely receipt of their Bid Proposals. It is the Contractor's responsibility to ensure that the Bid Proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the Bid Proposal. Electronic mail and faxed Bid Proposals will not be accepted. Contractors must furnish all information necessary to evaluate the Bid Proposal. Bid proposals that fail to meet the mandatory requirements of the RFP may be disqualified. Verbal information provided by the Contractor shall not be considered part of the Contractor's Bid Proposal unless it is reduced to writing.

2.11 Bid Proposal Opening

Lead Agency will open Bid Proposals after the due date for submission of Bid Proposals. The Bid Proposals will remain confidential until the Evaluation Committee has reviewed all of the Bid Proposals submitted in response to this RFP and Lead Agency has announced a notice of intent to award a contract. See Iowa Code Section 72.3. However, the names of Vendors who submitted timely Bid Proposals will be publicly available after the Bid Proposal opening. The announcement of Vendors who timely submitted Bid Proposals does not mean that an individual Bid Proposal has been deemed technically compliant or accepted for evaluation.

2.12 Costs of Preparing the Bid Proposal

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

2.13 Rejection of Bid Proposals

Lead Agency reserves the right to reject any or all Bid Proposals, in whole and in part, received in response to this RFP at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by Lead Agency to award a contract. This RFP is designed to provide Vendors with the information necessary to prepare a competitive Bid Proposal. This RFP process is for Participating Agency's benefit and is intended to provide Participating Agency with competitive information to assist in the selection of a Vendor to provide goods and/or services. It is not intended to be comprehensive and each Vendor is responsible for determining all factors necessary for submission of a comprehensive Bid Proposal.

2.14 Disqualification

The Lead Agency will reject any Bid delivered after the due date and time. In addition, the Lead Agency may reject outright and may not evaluate Bids for any one of the following reasons:

2.14.1 The Contractor acknowledges that a requirement of the RFP cannot be met.

2.14.2 The Contractor's Bid materially changes a requirement of the RFP or the Bid is not compliant with the requirements of the RFP.

2.14.3 The Contractor's Bid limits the rights of the Lead Agency.

2.14.4 The Contractor fails to include information necessary to substantiate that it will be able to meet a requirement of the RFP.

- 2.14.5** The Contractor fails to timely respond to the Lead Agency's request for information, documents, or references.
- 2.14.6** The Contractor fails to include a bid bond, if required.
- 2.14.7** The Contractor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in Section 3 of this RFP.
- 2.14.8** The Contractor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP or otherwise fails to comply with the requirements of this RFP.
- 2.14.9** The Contractor initiates unauthorized contact regarding the RFP with state employees. State employees are those who are paid by the State of Iowa, such as ICSAC board members, ICSAC staff, Legislators, etc.
- 2.14.10** The Contractor provides misleading or inaccurate responses.
- 2.14.11** The Contractor's Bid is materially unbalanced.
- 2.14.12** There is insufficient evidence (including evidence submitted by the Contractor and evidence obtained by the Lead Agency from other sources) to satisfy the Lead Agency that the Contractor is properly responsive and responsible to satisfy the requirements of the RFP.
- 2.14.13** The Contractor alters the language in Attachment 1, Certification Letter or Attachment 2, Authorization to Release Information letter.

2.15 Nonmaterial Variances

Lead Agency reserves the right to waive or permit cure of nonmaterial variances in the Bid Proposal if, in the judgment of Lead Agency, it is in Lead Agency's best interest to do so. The determination of materiality is in the sole discretion of Lead Agency.

2.16 Reference Checks

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

2.17 Information from Other Sources

Lead Agency reserves the right to obtain and consider information from other sources concerning a Vendor, such as the Vendor's capability and performance under other contracts, the Vendor's financial stability, past or pending litigation, the state's own experience with the vendor, and other publicly available information.

2.18 Verification of Bid Proposal Contents

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

2.19 Bid Proposal Clarification Process

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

2.20 Disposition of Bid Proposals

All Bid Proposals become the property of Lead Agency and shall not be returned to the Vendor at the conclusion of the selection process; the contents of all Bid Proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Iowa Code Chapter 22 or other applicable law.

2.21 Public Records and Requests for Confidential Treatment

Lead Agency may treat all information submitted by a Vendor as public information unless the Vendor properly requests that specific parts of the Bid Proposal be treated as confidential at the time of submitting the Bid Proposal. Lead Agency's release of information is governed by Iowa Code Chapter 22. Vendors are encouraged to familiarize themselves with Chapter 22 before submitting a Bid Proposal. Lead Agency will copy public records as required to comply with the public records laws.

Reference: <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=iowaCode&ga=83> (enter 22)

Any request for confidential treatment of specific information must be included in the transmittal letter with the Vendor's Bid Proposal. In addition, the Vendor must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. Pricing information cannot be considered confidential information. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the Vendor to respond to any inquiries by Lead Agency concerning the confidential status of the materials.

Any Bid Proposal submitted which contains specific confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Failure to properly identify specific confidential information shall relieve Lead Agency or State personnel from any responsibility if confidential information is viewed by the public, a competitor, or is in any way accidentally released. Identification of the entire Bid Proposal as confidential may be deemed non-responsive and disqualify the Vendor.

If the Contractor designates any portion of the RFP as confidential, the Contractor must **submit one copy of the Bid Proposal plus one on CD both marked "Public copy"** from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in section 3 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the Bid Proposal as possible.

If Lead Agency receives a request for information marked confidential, written notice shall be given to the Vendor seven calendar days prior to the release of the information to allow the Vendor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.

Lead Agency will treat the information marked confidential as confidential information only if a court of competent jurisdiction determines the information is confidential under Iowa Code Chapter 22 or other applicable law. The Vendor's failure to request confidential treatment of material will be deemed by Lead Agency as a waiver of any right to confidentiality the Vendor may have had.

In addition, any contract resulting from this RFP in its entirety shall not be considered confidential in any way.

2.22 Copyrights

By submitting a Bid Proposal, the Vendor agrees that Lead Agency may copy the Bid Proposal for purposes of facilitating the evaluation of the Bid Proposal or to respond to requests for public records. The Vendor consents to such copying by submitting a Bid Proposal and warrants that such copying will not violate the rights of any third party. Lead

Agency shall have the right to use ideas or adaptations of ideas that are presented in the Bid Proposals.

2.23 Release of Claims

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

2.24 Presentations

Vendors may be required to make a presentation of the Bid Proposal or demonstration of proposed solution as part of bid proposal clarification process. The presentation may occur at Participating Agency's offices or at the offices of the Vendor. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of Lead Agency. The presentation may include slides, graphics and other media selected by the Vendor to illustrate the Vendor's Bid Proposal. The presentation shall not materially change the information contained in the Bid Proposal.

2.25 Evaluation of Bid Proposals Submitted

Bid Proposals that are timely submitted and are not subject to disqualification will be reviewed in accordance with Section 5 of the RFP. Lead Agency will not necessarily award any contract as a result of this RFP and may not award a contract to the Vendor offering the lowest cost to Lead Agency and Participating Agencies. Instead, Lead Agency will award the contract(s) to the Responsible Vendor(s) whose Responsive Bid Proposal Lead Agency believes will provide the best value to Lead Agency and the Participating Agencies.

2.26 Award Notice and Acceptance Period

Notice of intent to award the contract(s) will be sent to all Vendors submitting a timely Bid Proposal and will 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. If the apparent successful Vendor fails to negotiate and deliver an executed contract by that date, Lead Agency, in its sole discretion, may cancel the award and award the contract to another Vendor which Lead Agency believes will provide the best value to Lead Agency.

2.27 Definition of Contract

The full execution of a written contract shall constitute the making of a contract for the goods and/or services requested by the RFP and no Vendor shall acquire any legal or equitable rights relative to the contract for goods and/or services until the contract has been fully executed by the successful Vendor and Participating Agency.

2.28 Choice of Law and Forum

This RFP and the Resulting Contract are to be governed by the laws of the state of Iowa. Changes in applicable laws and rules may affect the award process or the resulting contract. Vendors 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.

2.29 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. Vendors are responsible to determine the applicability of this Chapter to their activities and to comply with the 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 Participating Agency anticipates that the selected Vendor will provide goods and/or services as requested by Lead Agency. Participating Agency will not guarantee any minimum level of purchases, or any purchase at all.

2.31 Appeals

A bidder whose proposal has been timely filed and who is aggrieved by the award of the department may appeal the decision by filing a written notice of appeal (in accordance with 11—Chapter 105.20, Iowa Administrative Code) to: The Director of the Department of Administrative Services, Hoover State Office Building, Des Moines, Iowa 50319-0104 and a copy to the issuing officer. The notice must be filed within five days of the date of the Intent to Award notice issued by the Department, exclusive of Saturdays, Sundays, and legal state holidays. The written notice may be filed by fax transmission to 515.242.5974. 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 vendor.

2.32 Access to the Proposed System

During the time in which a response to an RFP is being evaluated, the vendor shall provide free web access to the proposed system (if an existing system is available) or a mock up of same (if readily available) and instructions on how to access the proposed web system.

2.33 Optional Letters of Intent to Bid

An optional letter of intent to bid may be e-mailed, sent via mail, delivery service or hand delivered to the Issuing Officer and received by the time and date listed in the RFP cover sheet. The optional letter of intent to bid must identify the RFP by its name and number and include the Contractor's name, mailing address, electronic mail address, fax number, telephone number, a statement of intent submit a bid in response to the RFP, and an authorizing signature. Submitting an optional letter of intent to bid is not a mandatory condition to submit a Bid Proposal but is to ensure receipt of written responses to Contractors' questions and Addenda to the RFP.

3.1 Instructions

These instructions prescribe the format and content of the Bid Proposal. Failure to adhere to the proposal format may result in the disqualification of the Bid Proposal.

3.1.1 The Proposal shall be typewritten on 8.5" x 11" paper. Duplex print is acceptable. Use of three ring binders is preferred.

3.1.2 The Bid Proposal shall be divided into two separately sealed parts: 1) the **Business & Technical Proposal** and 2) the **Cost Proposal**. (The evaluation committee will not be given the cost proposals until the scores on the technical proposals are final).

Each Part of the Proposal shall be sealed in an envelope. If multiple envelopes for each Bid Proposal are used, the envelopes shall be numbered in the following fashion: 1 of 4, 2 of 4, etc. The envelopes shall be labeled with the following information:

[RFP Number] [RFP Title] [Proposal Due Date]
[Whether Technical Proposal or Cost Proposal]
[Issuing Officer's name] [Lead Agency's Address]
[Contractor's Name and Address]

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

3.1.3 One (1) original with original signature, seven (7) paper copies of the Bid Proposal, and one (1) electronic copy, each in a sealed envelope, shall be timely submitted to the Issuing Officer. Vendors are required to submit their responses in hardcopy only to the Issuing Officer.

3.1.4 All electronic copies are to be in searchable PDF format on either a CD or on Flash Drive. All proposal documents are to be assembled in logical order into one (1) PDF file (not to exceed 20 MB) that represents the entire proposal. The PDF file shall have appropriate bookmarks relative to a table of contents for ease of navigation. The state reserves the right to request portions of the PDF file in their original format.

3.1.5 If the Vendor designates any information in its proposal as confidential, the Vendor must also submit one (1) separately sealed paper copy of the Bid Proposal marked "Public Copy" from which confidential information has been excised (as instructed in RFP Section 2.21). Include a PDF electronic 'Public Copy' on a separately sealed CD or flash drive.

3.1.6 Bid proposals shall not contain extraneous promotional or display materials.

3.1.7 Attachments shall be referenced in the Bid Proposal.

3.1.8 If a Vendor proposes more than one method of meeting these requirements, each shall be labeled and submitted separately. Each will be evaluated separately.

3.2 Business and Technical Proposal Contents

The following documents and responses shall be included in the Bid Proposal in the order given below:

3.2.1 Transmittal Letter

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

number, and telephone number. Any request for confidential treatment of information shall be included in the transmittal letter in accordance with the provisions described in this RFP.

3.2.2 Table of contents

The Contractor shall include a Table of Contents of its Bid Proposal and submit the Submittal Check list (RFP Attachment # 3).

3.2.3 Executive Summary

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

3.2.3.1 Statements that demonstrate that the Vendor has read, understands and agrees with the terms and conditions of the RFP.

3.2.3.2 An overview of the Vendor's plans for complying with the requirements of this RFP.

3.2.3.3 Any other summary information the Vendor deems to be pertinent.

3.2.4 Point by Point Response to RFP Section 4 -Specifications and Technical Requirements

The Vendor must present in detail all products and services proposed in response to this RFP. It is the Vendor's responsibility to adequately describe any products and services proposed.

Vendor must describe how the proposed system will meet each of the requirements in Section 4. All descriptions of the system must be presented in sufficient detail so that an evaluation can be made without prior specific knowledge of a proposed system. It should not be assumed that members of the evaluation committee have specific knowledge of the system proposed, but that each member of the committee does have sufficient technical background to conduct an evaluation when presented with complete information.

The vendor shall address each technical requirement in Section 4 of this RFP and explain how it plans to meet, comply with, or provide each requirement. Each response must reference the specific RFP section and subsection number. Proposals must be fully responsive to technical requirements. Merely repeating the requirements will be considered non-responsive and may disqualify the vendor. Proposals must identify any deviations from the requirements of this RFP and any requirements the vendor cannot satisfy, along with alternate solutions that meet the basic requirements as set forth by the RFP. Any deviations from the requirements of this RFP or any requirement of this RFP that the vendor cannot satisfy may disqualify the vendor.

3.2.5 Background Information

The Vendor shall provide the following general background information:

3.2.5.1 Name, address, telephone number, fax number and e-mail address of the Vendor including all d/b/a's or assumed names or other operating names of the Vendor.

3.2.5.2 FEIN and Form of business entity, i.e., corporation, partnership, proprietorship

3.2.5.3 State of incorporation, state of formation, or state of organization.

3.2.5.4 Identification and specification of the location(s) and telephone numbers of the major offices and other facilities that relate to the Vendor's performance under the terms of this RFP.

3.2.5.5 Local office address and phone number (if any).

- 3.2.5.6** Number of employees.
- 3.2.5.7** Name, address and telephone number of the Vendor's representative to contact regarding all contractual and technical matters concerning this Bid Proposal.
- 3.2.5.8** Name, address and telephone number of the Vendor's representative to contact regarding scheduling and other arrangements.
- 3.2.5.9** Identify the Vendor's accounting firm.
- 3.2.5.10** Name, address, contact information plus qualifications of any subcontractor(s) who will be involved with this project and their role.
- 3.2.5.11** Note: The successful Contractor will be required to register to do business in Iowa before payment can be made. For vendor registration documents visit:
http://das.gse.iowa.gov/procurement/vendor_reg.html and
<http://www.sos.state.ia.us/business/form.html>

3.2.6 Experience

The Vendor must provide the following information regarding its experience:

- 3.2.6.1** Number of years in business.
- 3.2.6.2** Number of years experience with providing the types of goods and/or services sought by the RFP.
- 3.2.6.3** Describe the level of technical experience in providing the types of goods and/or services sought by the RFP.
- 3.2.6.4** List all goods and/or services similar to those sought by this RFP that the Vendor has provided to other businesses or governmental entities.
- 3.2.6.5** **Letters of Reference** including Names and full contact information of three (3) previous customers or clients knowledgeable of the Vendor's performance in providing goods and/or services similar to the goods and/or services described in this RFP including the name of a contact person, Email address and telephone number for each reference.
- 3.3.6.6** **Names, Roles and Resumes of all Key Personnel** that will be involved in the project.

3.2.7 Financial Information

To better assess the long term risks of dealing with a vendor, the bidder must provide the following financial information, (reference 2.21 regarding confidential information).

- 3.2.7.1** Submit audited annual reports, financial statements or credit reports for the last 3 years and
- 3.2.7.2** Provide a minimum of three (3) financial letters of reference, such as from banks and creditors, including full contact information.

3.2.8 Terminations, Litigation, Debarment

The Vendor must provide the following information:

- 3.2.8.1** During the last five (5) years, has the Vendor had a contract for goods and/or services terminated for any reason? If so, provide full details related to the termination.
- 3.2.8.2** During the last five (5) years, describe any damages or penalties or settlements to resolve disputes entered into by Vendor under any of its existing or past contracts as it relates to goods and/or services

performed that are similar to the goods and/or services contemplated by this RFP. If so, indicate the reason for the penalty or exchange of property, goods, or services and the estimated amount of the cost of that incident to the Vendor.

3.2.8.3 During the last five (5) years, describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Vendor to engage in any business, practice or activity.

3.2.8.4 During the last five (5) years, list and summarize all litigation or threatened litigation, administrative or regulatory proceedings, or similar matters to which the Vendor or its officers have been a party. The Vendor must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the Bid Proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a Bid Proposal, and with respect to the successful Vendor after the execution of a contract, must be disclosed in a timely manner in a written statement to Lead Agency.

3.2.8.5 During the last five (5) years, have any irregularities been discovered in any of the accounts maintained by the Vendor on behalf of others? If so, describe the circumstances of irregularities or variances and disposition of resolving the irregularities or variances.

3.2.9 Acceptance of Terms and Conditions

The Vendor shall specifically agree that the Bid Proposal is predicated upon its acceptance of all terms and conditions stated in the RFP as instructed in Section 6.1. If the Vendor objects to any term or condition, the Vendor must specifically refer to the RFP page and section number as instructed in Section 6.1. Objections or responses that materially alter the RFP may be deemed non-responsive and disqualify the Vendor.

3.2.10 Certification Letter

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

3.2.11 Authorization to Release Information

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

3.2.12 Firm Bid Proposal Terms

The Vendor shall guarantee in writing the availability of the goods and/or services offered and that all Bid Proposal terms, including price, will remain firm a minimum of 120 days following the deadline for submitting Bid Proposals.

3.2.13 Bid Proposal Security - There is no bid bond required by this RFP.

3.3 Cost Proposal

The vendor shall provide its firm cost proposal for each year of the contract within a separately sealed envelope using the Cost Proposal Format in RFP Attachment # 4.

The cost proposal must itemize all costs and include a total of all costs for the contract period and for statewide usage on the system proposed. The amounts reflected should

exclude state and federal taxes, as the State is a tax exempt entity. All prices offered by the Vendor shall be firm and fixed. The State of Iowa will not pay or be liable for any additional costs that are not specified in the proposal. Payment under the contract shall be made in arrears. The State of Iowa will not make any advance deposits. Vendor shall agree invoices will include all elements of cost in a timely manner and include any other information deemed necessary by Participating Agency.

- 3.3.1** The proposal must include an itemized fee schedule for principals, support personnel, and expenses. Include any costs to Participating Agency such as for copying, mailing, and other charges. These items are to be included in each deliverable cost.
- 3.3.2** The cost proposal must include a description of the cost estimation methodology.
- 3.3.3** The Vendor must provide specific costs for the State to implement each proposed phase of the implementation schedule identified in the Vendor's Work Plan.
- 3.3.4** The Cost Proposal must include an all-inclusive (including all travel, expenses, etc.), itemized, not-to-exceed total cost, in U.S. Dollars, to provide the requested items and services (deliverables).
- 3.3.5** The Cost Proposal must include an annualized breakdown of the total cost of ownership (TCO) projected forward six (6) years from the date the contract is executed. The breakdown must list separately, at a minimum, new costs, recurring costs, and maintenance costs.
- 3.3.6** The proposal should address all associated costs of implementing the project including, for example, the itemized costs of recommended servers and other hardware, if necessary. The State reserves the right to purchase any third party hardware or software through state contracts or by a separate bid process.
- 3.3.7** The proposal must include the separate cost of implementing each phase of the project and deliverable.
- 3.3.8** The cost proposal must describe contingency procedures and rates for any change requests, based on previous project experience (if applicable). Change request rates should be separate and itemized in the Cost Proposal.
- 3.3.9** Costs to integrate the Web System with the existing Participating Agency's data management software should be included. The system the vendor will interface with is Web Services. The Lead Agency will use an API call to retrieve the data to display.
- 3.3.10** While the Technical Proposal must include the specifications of the recommended hardware, software and adapters necessary to implement the Web System at the State, the vendor shall itemize the associated costs as a foot note in the Cost Proposal. The Vendor must indicate in the Technical Proposal which items it proposes to provide under the contract and which items it expects the State will have or procure separately. The State reserves the right to purchase any hardware, software, and adapters independent of any resulting contract from this RFP.

SECTION 4 SPECIFICATIONS AND TECHNICAL REQUIREMENTS

4.1 Overview

Participating Agency seeks a comprehensive, efficient, and user friendly web-based “community center”. The Iowa Statewide Community Center Web Portal will provide a centralized location for system users to access Participating Agency’s programs, products, services, and information. These services include, but are not limited to, the state-designated career information and decision-making system as identified by the Iowa Department of Education consistent with the directives of 2008 Iowa Senate File 2216, (see Exhibit B) financial aid assistance, career exploration, processes and content for career development and planning, college awareness, college planning, and financial literacy. The system users include, but are not limited to:

- A. K-12 Students
- B. Post-secondary Students
- C. K-12 Schools
- D. Adult Learners
- E. Postsecondary Institutions
- F. Communities of Support-Communities of support would refer to other programs or organizations with similar missions and that provide college access, career planning, or financial literacy services to Iowa students.
- G. Parents
- H. Employers
- I. State Agency Partners such as Iowa Workforce Development.

The successful Contractor shall provide the goods and/or services to Participating Agency in accordance with the technical specifications defined in this Section. The Contractor shall address each requirement in this Section and explain how it will comply with each requirement. Bid Proposals must be fully responsive to each requirement. Merely repeating the requirements may be considered non-responsive and may disqualify the Contractor. Bid Proposals must identify any deviations from the requirements of this RFP or requirements the Contractor cannot satisfy. Any deviations from the requirements of Section 4 or any requirements of this RFP that the Contractor cannot satisfy will disqualify the Contractor.

- 4.2 Implementation Schedule** - Each requirement in Sections 4.4, 4.5 and 4.6 is marked whether it is part of “Phase One”, or “Phase Two” or part of both phases. See also RFP Section 1.4. “Phase One” must be implemented and complete by August 3, 2009 or sooner, including all testing, including final acceptance by the state. “Phase Two” must be similarly implemented and complete by January 2, 2010 or before.

Completion		
Phase 1 – Implementation and Integration	Career Information (CI) System Tools	August 3, 2009
	State Enterprise A&A	
Phase 2 – System Integration and Compatibility	ICSAC Scholarship and Grant System	January 2, 2010
	Other State Agency Tools	
	ICSAC Data Warehouse	
	Iowa Dept of Education e-Transcripts	
	State Enterprise e-Payment	
	Iowa Student Information Systems	
	Other Secondary or Post-Secondary Data Systems	

4.3 Types of Requirements

There are four groups of requirements addressed in the specifications in Section 4.4:

<u>Group</u>	<u>Type</u>
A.	Mandatory Pass/Fail Requirements: A successful Contractor must be able to satisfy all these requirements to be deemed a Responsible Contractor. All items marked 'Group A' are Mandatory Pass/Fail Requirements. Contractors must mark either "yes" or "no" to each requirement in their Bid Proposals. By indicating "yes", a Contractor agrees that it shall comply with that requirement throughout the full term of the Resulting Contract, if the Contractor is successful. In addition, for each specific requirement, the Contractor shall provide specific references and/or supportive materials to verify the Contractor's compliance with the requirement. Failure to provide this information will cause the Bid Proposal to be deemed non-responsive and therefore rejected. A pass/fail evaluation will be utilized for all 'Group A' Mandatory Requirements. Participating Agency reserves the right to determine whether the supportive materials submitted by the Contractor demonstrate the Contractor will be able to comply with the Mandatory Requirements. If Participating Agency determines the supportive materials do not demonstrate the Contractor will be able to comply with the Mandatory Requirements, Participating Agency will disqualify the Bid Proposal. Only Contractors with all yes responses will be considered. The costs of satisfying 'Group A' requirements must be included in the Cost Proposal.
B.	Mandatory Scored Requirements: Proposals which pass the Mandatory Pass/Fail Requirements review marked 'Group A' above will then will be reviewed and these requirements marked 'Group B' will then be scored in accordance with the evaluation criteria described in Section 5 by the Evaluation Committee. Compliance with these Scored Technical Requirements is also mandatory. Contractors must mark either "yes" or "no" to each requirement in their Bid Proposals. By indicating "yes", a Contractor agrees that it shall comply with that requirement throughout the full term of the Resulting Contract, if the Contractor is successful. In addition, for each specific requirement, the Contractor shall provide specific references and/or supportive materials to verify the Contractor's compliance with the requirement. Failure to provide this information may cause the Bid Proposal to be deemed non-responsive and therefore rejected. Only Contractors with all yes responses will be considered. The costs of satisfying 'Group B' requirements must be included in the Cost Proposal.
C.	SCORED REQUIRED RESPONSES: Although these specifications are not mandatory for bidders to comply with, it is required that they respond fully to the specification for proper scoring in accordance with the evaluation criteria in Section 5. The costs of satisfying 'Group C' requirements must be itemized in the Cost Proposal.
D.	Optional Features for possible Extra Credit. If any additional/optional features are proposed which the participating Agency deems of value, the proposal may receive extra points during scoring by the committee. The cost of these features must be itemized separately <u>as a foot note</u> in the Cost Proposal. The cost of these 'Group D' features will not be a part of the cost evaluation.

4.4 System and Vendor Requirements:

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.1	Both	A	Vendor must deliver proposed system elements according to the implementation schedule in Section 4.2			
4.4.2	One	A	Vendor must demonstrate that the product meets ACSCI standards for excellence and ethical practices. Vendor should provide a written description or verification that the product meets comprehensive system standards, and provide evidence. View information on the ACSCI standards at www.acsci.org .			
4.4.3	Both	A	Vendor system must be able to provide Participating Agency access and ownership to all data contained in the system.			
4.4.4	One	A	The Web System must authenticate all Web System users through the State's Enterprise Authentication and Authorization (Enterprise A&A) single sign on system. The integration should be complete at the time of implementation. There is more information regarding the State's A & A system and a Developer's Guidebook located at: https://forge.iowa.gov/wiki/index.php/Enterprise_A%26A_Home_Page .			
4.4.5	One	A	The proposed web system must contain a career information delivery system .			
4.4.6	Both	A	Performance and Scalability - The proposed system must support a peak load of no fewer than 500 concurrent user sessions and 25 requests per second. At the peak load specified above, the system will complete 95 percent of all requests within 5 seconds and 100 percent of all requests within 10 seconds. The Vendor must identify any specific transactions that will not adhere to these performance goals and indicate why.			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.7	One	B	Functionality of Vendor System - The vendor must provide a Career Information (CI) Delivery System that connects the user's interests, education and career choices. The system shall adhere to the comprehensive system standards established by the Association of Computerized Systems for Career Information (ACSCI). View information on the ACSCI standards at: www.acsci.org. The proposed (CI) system must offer the following components:			
4.4.7.1	One	B	User Repository and Electronic Portfolio - Users must have access to a repository to save, store, edit, display or print academic, career, or personal information for future reference. The portfolio should be a life-long, portable portfolio that can move with the student as they progress through secondary and postsecondary education and into the work force. Examples of information that should be stored in the portfolio include, but are not limited to: • Education and Career Plans • Assessment Results • Search Results (i.e., for occupations, scholarships, postsecondary institutions) • Created Resumes • Occupations • Postsecondary Institutions • Scholarships The portfolio could also include: • Reflection Activities • Goal Setting Activities • Ability to upload documents, video or audio files, photos or other media to document user accomplishments • Ability to track progress towards the completion of their plans and goals			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.7.2	One	B	Occupation Database with Industry Information - The proposed system must contain a database that includes occupational information. The user should be able to, at a minimum, search and explore occupations and careers based on assessment results, by career clusters, and through an alphabetical list. The system database architecture should promote connections between education, occupations, training, financial aid, and job information. Responses to queries should provide the broadest response possible, e.g., if a user is exploring Accountants as a potential occupation the system should also provide prompts that encourage exploration of Actuaries, Auditors, and similar occupational titles.			
4.4.7.3	One	B	Self-Assessment Tools - The proposed system must include formal assessments that are reliable and valid. Assessments help users understand their employable skills and match user interest and skills to possible educational and careers pathways. The outcomes of multiple assessments can be mapped to education and career choices. All assessments should return constructive feedback and provide multiple education and career option outcomes. Users will utilize the assessments to learn more about themselves in order to create education and career plans. At a minimum the system must include assessments to determine a user's: • Interests • Skills • Work Values • Career Cluster (Groupings of occupations/career specialties according to common knowledge and skills for the purpose of organizing programs and curricula. The system must use the 16 National Career Clusters.)			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.7.4	One	C	Other types of self-assessments that are desirable, but not required, include assessments to determine a user's: • Personality Type • Learning Style • Ability • Aptitudes • Program or major			
4.4.7.5	One	B	Education and Training Information - Users must be able to identify education and training required for chosen occupations. Related education and training information, including adult education, apprenticeship, and postsecondary program and institutional information, must be made available at the state level, and, when possible, at the level of sub-state regions or metropolitan areas. This section must include: • A database of undergraduate and graduate post secondary institutions, career/technical schools, military training, apprenticeships and trade associations. • A database of programs and majors - descriptions of academic and vocational post-secondary educational programs, including general information about admissions requirements and course work. • College awareness tools.			
4.4.7.6	One	B	Job Search Activities - Job search information includes information about what employers seek in prospective employees, job vacancy listings, techniques for obtaining employment, and methods of documenting preparation, experience, and references. Activities can include, but are not limited to: • Resume Builder • Cover Letter Builder • Interviewing tips and strategies • Connections to Job Banks (Users can search local and state job openings, and post their resumes and apply for jobs online.)			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.7.7	One	B	Education and Career Plan - Users must be able to create an education and career plan that is developmentally appropriate (i.e., career awareness - career exploration - career preparation – career management continuum). Planning must include ability to cross-walk 4-year high school plans with requirements for state and district graduation requirements, post-secondary program requirements and Iowa Core Curriculum Essential Concepts and Skills (See http://www.corecurriculum.iowa.gov for more information on Iowa Core Curriculum). Activities can include, but are not limited to, the following: • Assessments • Career Research • Developing a course path for high school and beyond • Choosing a program or major • Researching postsecondary institutions or other training options • Researching financial aid options • Connecting interests, skills and abilities to a career option • Reflection and goal setting activities • Demonstration of accomplishments			
4.4.7.8	One	B	Financial Aid Information - Users must be able to access information regarding finding and applying for federal and state student financial aid. Financial aid includes grants, scholarships, loans and work-study.			
4.4.7.9	One	B	Scholarship Search - The system must have a national searchable scholarship database that has the ability for input of state and local scholarship information.			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.7.10	One	B	Educator Resources and Tools - Educators must have administrative functions which permit access to student portfolios. At the minimum this access should allow educators to: • Track and monitor student progress towards completion of education or course plan • View assessment outcomes and activity completion trends within the system • Create usage reports • Customize planning tools to include local graduation requirements and course titles.			
4.4.7.11	One	B	Educators must be able to access information to help them effectively make use of the system. This can include, but is not limited to, the following: • Practical learning activities (subject area specific) • Lesson plans • Curriculum-based tools for use in the classroom • Career development research			
4.4.7.12	One	B	State Components - The career information system will be used by every Iowa student (8-12 grades) to develop a core curriculum plan to guide the student toward the goal of successfully completing the core curriculum by the time the student graduates from high school. Additionally, the plan shall include a timeline for each student to complete the required state components. See Exhibit B - SF2216 and Exhibit C – State Components . The system must include: • a self-directed tool for students to complete and monitor progress towards completion of the required state components within the portfolio. The tool should guide the student through each step of the required components and provide a printer-friendly summary. • a process to acquire a parent's approval or signature (must be stored electronically in the system) • a tool for educators to track and monitor student progress towards completion of the state components • a tool to access aggregated data by district on the number of students who have completed the self-directed tool.			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.7.13	One	C	Interactive Planning Tools - Interactive planning tools should include academic college readiness tools, such as test preparation for standardized tests such as ACT and SAT. Planning should include the ability to cross-walk 4-year high school plans with requirements for state and district graduation requirements & post-secondary program requirements. The state can customize the planning tools to include specific course requirements for State of Iowa grants and scholarship, Academic Competitiveness Grant (ACG) eligibility, and other specific state or local programs. Examples of tools could include, but are not limited to the following: • Diagnostic tests to evaluate skill level • Practice tests, • Study guides • Interactive or audio-visual tutorials • Vocabulary, science, reading and/or math drills • Instructional content to build skills in particular subject areas • System to monitor student's progress and performance • Online tutoring with feedback • Test taking tips and strategies			
4.4.7.14	One	C	Electronic Communication Tools - The system should provide electronic communications tools that allow approved individuals to communicate with the system user. Examples of communication tools could include electronic messages posted to a user's portfolio, email messages, calendar system, or <u>a communication hub for partner agencies and users</u>. The platform should include calendars or event boards that show major statewide events such as career fairs, college/post-secondary nights, and training opportunities. The platform should allow identified members access to update the communication tools and web hosted calendar.			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.7.15	One	B	College Planning - The system shall: • Allow students to use system utilities to monitor, track, and assess course requirements needed to successfully complete several different post-secondary programs and related requirements (i.e., admissions, state scholarship programs, NCAA requirements, high school graduation, etc.) • Provide students with college readiness preparation information specific to each grade level (8-12), including a time line of necessary exams each year, and financial aid priority deadlines • Allow for link exchanges to state resources such as the Regents Admission Index, Iowa Distance Learning, and other resources • Provide the user with necessary graduation requirements for both the district and state.			
4.4.7.15 cont'd	One	C	• and preferably have the ability to support a customized institution admissions application			
4.4.8	One	B	Search and Sorting Requirements - The system shall: • Uniformly present information on different post-secondary options, occupations, and specific jobs in order to enable effective comparisons. • Include a search or matching tool that allows the user to combine several criteria to identify careers (i.e., assessment results, education level and desired salary etc.).			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.9	One	B	Printer-friendly Print Screen Requirements – The system shall print screens in a printer-friendly version. The screens that should be offered in a printer-friendly version include, but are not limited to: • Assessment results • Search Results • Occupation profiles • Postsecondary Institution profiles • Scholarships • Education and Career Plans • Display information such as post-secondary training and occupation profiles in multiple formats when possible, including print and streaming video. • Integrate information from various planning and reference resources to make interaction easy and useful. The platform should link to external sources of information such that the site's look and feel is continuous.			
4.4.10	One	C	Localization - The system should present information specific to the state and/or the region. When applicable, Iowa data should be listed first in search results (i.e., when listing results for a college search) The vendor will work with ICSAC to determine the best way to update Iowa specific data when it becomes available in a manner that is not burdensome to ICSAC and those supplying the updated information. This could include on-line updating and the ability to import data from and export data to a Microsoft Access database owned and operated by ICSAC. The vendor will supply all existing information needed to make updates.			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.11	One	B	Data in the system must include: • Iowa college and university information; • Iowa undergraduate and graduate program/major information; • Iowa scholarship information; • Iowa student financial aid information; • Iowa licensure and certification connections; • Iowa outlook and earning information; • Iowa Core Curriculum Essential Concepts and Skills for course plan creation; (See http://www.corecurriculum.iowa.gov for more information on Iowa Core Curriculum); • Regional (Community College) Iowa Programs of Study (POS). Programs of Study is a sequence of instruction (required standards, knowledge and skills) consisting of coursework, co-curricular activities, work-site learning, service learning, and other learning experiences. This sequence of instruction provides preparation for a career.			
4.4.12	One	B	Reporting Capabilities - The system must provide reports to track system usage, problems in the system and status of education and career portfolios. Vendors must provide a list of any standard reports generated by the system and must include all data items tracked and stored. ICSAC shall have access to system usage reports at all times. Standard reports and the ability to create ad hoc Reports shall include, but are not limited to: • system usage, • site traffic • system components accessed by the user • education plans • results of top saved occupations, career cluster, programs, and postsecondary institutions			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.13	One	B	Migration of Current Data - The system must provide a solution to migrate data from student portfolios in the State of Iowa's current career information system. The required data elements would be the data set collected in the creation of the 8th grade plan. <u>Proposals must explain the bidder's data mapping techniques which it will utilize and how the bidder will quickly overcome any mapping problems, at bidder's expense.</u>			
4.4.14	One	C	It is desirable that the system display information in multiple languages besides English. Proposal shall list which languages are included. Spanish is highly recommended.			
4.4.15	One	C	It is desirable that the system have online financial aid calculators that allow users to estimate cost of attendance, loan repayment, financial aid eligibility, and growth over time of a post-secondary savings plan etc.			
4.4.16	Both	B	Access Control - Control of user access to the system and data is critical. The Web System must provide controls which define user roles and limit access to the system to authorized users. Information available to registered users in the system reports must be controlled by user-defined "rights" within the system. Solution must meet the federal COPPA law. See http://www.ftc.gov/ogc/coppa1.htm for COPPA law.			
4.4.17	Both	B	Security - Solution must meet or exceed the state standards. See http://das.ite.iowa.gov/standards/enterprise_it/index.html for standards.			
4.4.18	Both	C	Customizations - Vendors shall identify any areas that they expect to customize for the proposed solution, based on the requirements in this Section of the RFP. Such customizations should have corresponding assumptions and tasks in the proposed project/work plan, and MUST be part of the Cost Proposal.			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.19	Both	C	Universal Design and Section 508 of the U.S. Rehabilitation Act of 1973 - The solution should employ principals of Universal Design to the greatest extent possible. Universal Design is the design of products and environments to be usable by all people of all ages and abilities without the need for adaptation. It is preferred that the selected solution be compliant or will soon be compliant with Section 508 of the U.S. Rehabilitation Act of 1973, as amended (29 U.S.C. 794d) to remove barriers for persons with disabilities. Reference: http://www.access-board.gov/sec508/guide/index.htm . Bidder shall discuss in its proposal if and how its solution complies with or goes further than Section 508 in making the application accessible to persons with disabilities.			
4.4.20	Both	B	Training and Professional Development - Vendor shall provide details on plans to train Participating Agency staff on how to use the system. Vendor should include any professional development opportunities available to Participating Agency. Training of Iowa customers for the selected system will be provided solely by parties approved by ICSAC to perform the training. If requested by ICSAC, the vendor of the selected system will provide two full-day state-wide training sessions per year with all expenses of offering the training to be borne by the vendor. Training relating to the selected system, including training on updates and new products will be provided to as many as six (6) trainers designated by ICSAC prior to the beginning of each school year, with all associated training expenses borne by the vendor. The vendor shall train ICSAC staff to a point of proficiency which allows them, in turn, to train their own staff, partner agencies, and customers. All updates to the vendor's products or services must be reported to ICSAC prior to release to Iowa customers, including individual users. At least once a year, the vendor will sponsor and conduct a User			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
			Group meeting for Iowa customers with all expenses borne by the vendor. The vendor should provide a detailed training manual in electronic format.			
4.4.21	Both	B	Technical Support - Free technical support of the selected system shall be provided by the vendor of the selected system to all Iowa customers and to as many as six (6) trainers selected by ICSAC. Technical support should be accessible from the system, through the vendor website, by email address and phone, and response time should be minimal and reasonable, but in no event longer than 24 hours.			
4.4.22	One	C	Audit Trail - Vendor shall describe any system capabilities for creating log files, audit trails, and regular daily system usage.			
4.4.23	Both	B	Hosting - The system production environment may be hosted by the Vendor or by the Department of Administrative Services – Information Technology Enterprise (DAS-ITE). If the vendor can offer a proposal either way, alternate proposals shall be submitted per RFP Sections 3.1.7 and 4.6. <u>If the Vendor proposes to host the proposed solution</u> , the proposal must include a detailed description of the vendors operating environment. Vendors shall indicate which platforms (e.g., PC, Mac) and browsers (e.g., Explorer, Firefox, Safari) including versions, the proposed solution supports.			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.23	Both	B	The State's Operating Environment includes hosted web applications on the server platforms noted below. Direct access to the production servers is restricted to DAS-ITE Operations personnel. The servers are protected from the Internet by firewalls (NAT) and by reverse proxy. Specifically, this means that applications may not rely on the "Host:" header passed to them, as translation of this value occurs at the reverse proxy layer. In addition, SQL Server databases are hosted in a separate network segment. <u>If the proposed solution shall be hosted by DAS-ITE</u> Vendors shall affirm that the proposed solution is capable of operating within the environment as stated, or shall indicate which components of the solution are in conflict and identify the changes that would be required to the environment for operation of the solution. Vendors shall indicate which of the following environments the proposed solution will run on and specify the version: • Windows Server, • Fedora Core, • Cent OS. The proposed solution shall be capable of running in a virtualized environment. Vendors shall indicate which components of the proposed solutions CAN and CANNOT be virtualized. The system is expected to support a wide variety of governmental, organizational and private users. Vendors shall indicate which platforms (e.g., PC, Mac) and browsers (e.g., Explorer, Firefox, Safari) including versions, the proposed solution supports.			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
4.4.24	Both	B	Architecture - Vendors shall provide information on the architecture of the proposed solution. Such information shall include, but not be limited to, the third-party vendors and components to be used; as well as any proprietary or customized components, and the roles fulfilled by each component. Vendors shall indicate the networking configuration required (ports, protocols, etc.) between any components that require or allow for distributed computing. Vendors should give us as much information about the existing architecture of the proposed system as possible. Integration of all participating systems will likely be service based so having a service-based approach would be preferred. The RFP does not dictate the architecture of off-the-shelf products unless hosted by ITE. For more information, see 4.4.23 - Operating Environment.			
4.4.25	Both	B	System Integration & Compatibility - Vendors shall indicate how the proposed solution will integrate with DAS-ITE's web service proxy that provides the following state systems: a) State Enterprise A&A b) State Enterprise E-payment c) Iowa College Student Aid Commission Scholarship and Grant System d) Iowa Department of Education's electronic-transcript system e) Iowa Student Information Systems (SIS) f) Iowa College Student Aid Commission's Data Warehouse g) Iowa Department of Education's Project EASIER. For more information, visit http://www.iowa.gov/educate/index.php?option=com_content&task=view&id=44&Itemid=310 h) other secondary or post-secondary data systems. The system shall be able to produce and consume web services so to allow integration with external state systems hosted by Participating Agency and partner state agencies.			

Section Number	Phase	Group	Requirement	Provided and will Comply		Bidder's Full Response:
				Yes	No	
			The vendor shall enumerate the web services their solution makes available which must include, but is not limited to, the protocol (e.g. SOAP, XML-RPC, REST, etc), a description of the service, descriptions of each method, the names of each method, method parameters and return values. The proposed solutions should accommodate the ability to integrate with other state agency systems. Vendors should describe how that integration would work. The solution shall move data to and from these systems on an ongoing real-time automatic basis. For more information, see the web service proxy design Exhibit A . The vendor shall describe their plan associated with integrating the system to these components.			

4.5 Work Plan (a 'Group C' requirement)

The Vendor's Technical Proposal must include a detailed Work Plan. The Work Plan must address:

- a. A detailed schedule based on the number of days and/or weeks required for completing the work; an overall project timeline for implementation of proposed solution.
- b. A detailed breakdown of the proposed work structure, including activities, tasks, performance review, payment milestones, and objectives to provide the services and deliverables required to complete the project.
- c. A detailed breakdown of vendor staff resources assigned to the project, including number of staff and the percentage of time for each.
- d. A detailed breakdown of vendor's expectations for limited state resources that will be needed for the project, including number of state staff, qualifications, roles and responsibilities and the percentage of time for each state staff person.
- e. Start and ending dates for each task.
- f. A plan for coordinating the responsibilities of the State staff with those of the Vendor to ensure overall project success.
- g. A description of how the Project shall be managed, prioritized, and controlled. This must include the Project management structure (with organizational chart) and the method of Project status reporting.
- h. A Project Change Control Plan for controlling the project and prioritizing State and Vendor change requests.
- i. A statement of procedures for customization. A vendor should describe its procedures that will allow the Lead Agency to customize the product as needed.
- j. Installation and Implementation - If the solution is hosted by DAS/ITE, Vendors shall describe the steps and documents that will be provided for deployment and support of the test/pre-production and production systems by DAS-ITE staff.

4.6 Third Party Software and Hardware (a 'Group C' requirement)

If the solution is to be hosted by DAS/ITE, Vendors shall identify any components of the proposed solution that require per-client or per-server, or any other licensing not included in the Base Cost Proposal.

Vendors shall identify/recommend a minimum hardware set and (optionally) a preferred hardware set for deploying and operating the proposed solution. Bidder must identify if it offers the recommended hardware & software in its proposal and itemize associated costs in the Cost Proposal as a footnote. The state reserves the right to procure recommended hardware and software through state contracts or through another bid process.

All recommended hardware system software should be available to the vendor. (System software is defined as that general software required by the hardware for the operation such as the operating system, database management systems, compilers, commercially available off-the-shelf software, and communications software. Unreleased or Beta Test hardware and software must have prior approval by Participating Agency before it is procured)

Vendors shall identify/recommend all software associated with the operation of the system, including all third-party software that the State must acquire to deploy and operate the proposed solution. This should include, but not be limited to, operating system, DBMS or application server licenses, client software, drivers, adapters and converters, copyrighted media, logos or images, client access licenses, etc.

Primarily, the recommended hardware and software will be used as a baseline for comparison with existing DAS-ITE infrastructure (including virtual servers) and may or may not be accepted as part of the solution. Vendors should indicate any component(s) of the recommended hardware that may not be substituted for existing DAS-ITE infrastructure. The proposed hardware must allow the system to meet or exceed the minimum Peak Performance and Scalability goals in Section 4.4.6 as reiterated below:

The proposed system must support a peak load of no fewer than 500 concurrent user sessions and 25 requests per second. At the peak load specified above, the system will complete 95 percent of all requests within 5 seconds and 100 percent of all requests within 10 seconds. The Vendor must identify any specific transactions that will not adhere to these performance goals and indicate why.

Bidder shall include the complete specifications of the recommended hardware, software and adapters necessary to implement the Web System at the State. The vendor shall itemize the associated costs as a foot note in the Cost Proposal. The Vendor must indicate in the Technical Proposal which items it proposes to provide under the contract and which items it expects the State will have or procure separately. The State reserves the right to purchase any hardware, software, and adapters independent of any resulting contract from this RFP.

5.1 Introduction

This section describes the evaluation process that will be used to determine which Bid Proposal(s) provides the greatest benefit to the Lead Agency and Participating Agencies. The Lead Agency will not necessarily award any contract resulting from this RFP to the Contractor offering the lowest cost to the Lead Agency and Participating Agencies. Instead, the Lead Agency will award the contract to the Responsible Contractor whose Responsive Bid Proposal the agency believes will provide the best value to the Lead Agency. During the evaluation process all information concerning proposals submitted will remain confidential and will not be disclosed to anyone whose official duties do not require such knowledge.

5.2 Overview of Evaluation

All Bid Proposals will be first evaluated to determine if they comply with the Mandatory Requirements described in Section 4 (i.e. to determine if they the Contractor is a Responsible Contractor submitting a Responsive Bid Proposal). The evaluation committee will evaluate and score all Responsive Bid Proposals submitted by Responsible Contractor in accordance with this Section. To be deemed a Responsible Contractor and a Responsive Bid Proposal, the Bid Proposal must Answer "Yes" to all parts of Section 4 (use Attachment 3) and include supportive narrative or materials demonstrating how well the Contractor will be able to comply with the Mandatory Requirements in Section 4. All Bid Proposals will be first evaluated to determine if they comply with the mandatory requirements. The evaluation committee will evaluate and score all Responsive Bid Proposals meeting all mandatory requirements in accordance with this Section.

5.3 Preferences

In accordance with the provisions of Iowa Code § 73.1 which requires the following statement: A preference will be given to products and provisions grown and coal produced within the State of Iowa, when they are found in marketable quantities in the State and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states. Preferences required by applicable statute or rule shall also be applied, where appropriate.

5.4 Evaluation Committee

Participating Agency intends to conduct a comprehensive, fair, and impartial evaluation of Bid Proposals received in response to this RFP. Participating Agency will use an evaluation committee to review and evaluate the Bid Proposals. The evaluation committee will select and make a recommendation to Participating Agency's board of directors for approval. Participating Agency's board is not bound by the evaluation committee's recommendation. If the Vendor is approved by Participating Agency's board, the Vendor will receive the notice of award.

5.5 Evaluation Criteria

Participating Agency will evaluate responsive bid proposals based on the scored technical criteria described in this Section. In addition, the bid proposal must demonstrate and affirm that the Vendor and/or the proposed system will meet all mandatory requirements. Vendors or proposed systems that do not meet mandatory requirements shall be disqualified. The proposal must contain all of the information outlined in Section 3 - "Form and Content of Bid Proposals" in this RFP. The proposal must demonstrate that the Vendor meets all of the requirements outlined in Section 4 - "Specifications, Mandatory and Technical Requirements" in this RFP. Complete proposals will be evaluated and a recommendation will be made using the following criteria:

Cost Proposal:	30% of total possible score
Technical and Business Requirements:	70% of total possible score

5.5.1 Technical Proposal

The total possible score on the Technical Proposals will be 70% of the total possible score. Details on all the criteria and their weighting will be made available to the public by 3:00 PM CT by the day proposals are due. The criteria may include, but is not limited to, the following areas, which are not listed here in any particular order of importance.

- A. Qualifications, Experience, and References - Proposals will be evaluated for the extent to which Vendor qualifications, experience, references, and any other supporting information indicate that the Vendor will effectively and satisfactorily provide the services outlined in this RFP. References must be verifiable and references must corroborate the other evidence provided in the proposal.
- B. Method of Addressing Specifications and Technical Requirements - Proposals will be evaluated for the extent to which the methodology proposed by the Vendor addresses the Requirements described in this RFP, are appropriate to the needs of Participating Agency, are workable, and are consistent with Vendor qualifications.
- C. Terms and Conditions - Proposals will be evaluated on the degree of bidder's acceptance of the State's Terms and Conditions according to RFP Section 6.

5.5.2 Cost Proposal

Up to an additional 30% of all available points will be awarded based on Cost. To assist the agency in evaluating, Cost Proposals may be evaluated and points awarded as follows. The Cost Proposals will remain sealed during the evaluation of the Technical Proposal and any Bidder Demonstration. Only prospective vendors that meet all of the required features will be considered during the cost evaluation phase of the review process. The compliant prospective vendor's technical points will be added to the cost points, to obtain the total points awarded for the proposal. The Cost Proposals will be ranked from cheapest to the most expensive. The cheapest shall receive the maximum number of points available in this section. To determine the number of points to be awarded all other Cost Proposals, the cheapest bid will be used in all cases as the numerator. Each of the other bids will be used as the denominator. The percentage will then be multiplied by the maximum number of points and the resulting number will be the cost points awarded to other compliant vendors. Percentages and points will be rounded to the nearest whole value.

Example: Vendor A quotes \$35,000; Vendor B quotes \$45,000 and Vendor C quotes \$65,000.

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

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

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

6.1 Contract Terms and Conditions

The contract(s) that ICSAC expects to award as a result of this RFP will be based upon the Bid Proposal submitted by the successful Vendor and the RFP. The contract between ICSAC and the successful Vendor shall be a combination of the specifications, terms and conditions of the RFP, all contract terms and conditions contained in this Section and in Attachments 5, 6 and 7, the offer of the Vendor contained in the Bid Proposal, written clarifications or changes made in accordance with the provisions of the RFP, the terms and conditions contained in this Section and any other terms deemed necessary by ICSAC, except that no objection or amendment by a Vendor to the RFP requirements shall be incorporated by reference into the Contract unless ICSAC has explicitly accepted the Vendor's objection or amendment in writing.

All contract terms and conditions contained in Attachments 5, 6 and 7 will be incorporated into the resulting contract. The contract terms and conditions may be supplemented at the time of contract execution and are provided to enable Vendors to better evaluate the costs associated with the RFP and the potential resulting contract. Vendors should plan on any contract terms and conditions contained in Attachments 5, 6, and 7 being included in any contract awarded as a result of this RFP. All costs associated with complying with these requirements should be included in any pricing quoted by the Vendor.

By submitting a Bid Proposal, each Vendor acknowledges its acceptance of the RFP specifications and the contract terms and conditions without change except as otherwise expressly stated in its Bid Proposal. If a Vendor takes exception to a provision, it must state the reason for the exception and set forth in its Bid Proposal the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by the State, in its sole discretion, resulting in possible disqualification of the Bid Proposal. ICSAC reserves the right to either award a contract(s) without further negotiation with the successful Vendor or to negotiate contract terms with the selected Vendor if the best interests of ICSAC would be served.

Note: The degree to which a bidder accepts all the State's terms and conditions in this Section and in Attachments 5, 6, and 7 will be a significant proposal evaluation criteria in RFP Section 5.

6.2 Parties to Contract

The contract will be with ICSAC on behalf of the State of Iowa. All invoices shall be addressed to ICSAC and all payment warrants shall be initiated by ICSAC after delivery, test and acceptance according to the payment and compensation provisions within the contract. The contract shall assure that, if the Vendor sells all or substantially all of its assets (or merges into another firm), the asset sale (or merger agreement) will include a clause specifically committing the purchaser (or successor-in-interest) to continue performing the contract.

6.3 Contract Length

The term of the contract will begin and end on the dates indicated on the RFP cover sheet, not to exceed 6 years. The contract must be executed by May 11th, 2009. Failure to execute a contract by May 11, 2009 may allow ICSAC to negotiate a contract with the next highest scoring bidder without further competition

6.4 Charges and Access

ICSAC reserves the right to recover the cost of acquiring and administering the system selected pursuant to this RFP (hereinafter, the "selected system") by charging customers of

the system. ICSAC may, if deemed appropriate and necessary, charge Iowa customers for the selected system.

Free access to the selected system will be given to ICSAC and up to three (3) designees of ICSAC for training and user-support purposes. Vendor system must be able to provide Participating Agency access and ownership to all data contained in the system.

6.5 Training

Training of Iowa customers for the selected system will be provided solely by parties approved by ICSAC to perform the training. If requested by ICSAC, the vendor of the selected system will provide two full-day state-wide training sessions per year with all expenses of offering the training to be borne by the vendor. Training relating to the selected system, including training on updates and new products will be provided to as many as six (6) trainers designated by ICSAC prior to the beginning of each school year, with all associated training expenses borne by the vendor. The vendor shall train ICSAC staff to a point of proficiency which allows them, in turn, to train their own staff, customers and partner agencies. All updates to the vendor's products or services must be reported to ICSAC prior to release to Iowa customers, including individual users. At least once a year, the vendor will sponsor and conduct a User Group meeting for Iowa customers with all expenses borne by the vendor. The vendor should provide a detailed training manual in electronic format.

6.6 Technical Support

Free technical support of the selected system will be provided by the vendor of the selected system to all Iowa customers and to as many as six (6) trainers selected by ICSAC. Technical support should be accessible from the system, through the vendor website, by email address and phone, and response time should be minimal and reasonable, but in no event longer than 24 hours.

6.7 Communication and Marketing to Iowa Clients

All communication from the vendor to Iowa customers, including individual users, must be approved by ICSAC. No direct sales or marketing campaigns shall be made to Iowa customers, including individual users, without approval from ICSAC. Approval of sales or marketing campaigns shall be at the sole discretion of ICSAC. ICSAC may use and reproduce the vendor's logo or other marketing material as necessary to promote the selected system in Iowa. ICSAC or its designee will provide a web portal that will be exclusively promoted for use by all Iowa customers using the selected system. All marketing information directed by ICSAC and the vendor to Iowa customers of the selected system, including individual users, will identify and exclusively promote the Iowa web portal address.

6.8 Transfer of Information

The Vendor will not provide, sell or otherwise transfer to a third party any information acquired through the Vendor's system. A third party is hereby defined as any person or party other than the Vendor, Participating Agency, and Lead Agency partner agencies.

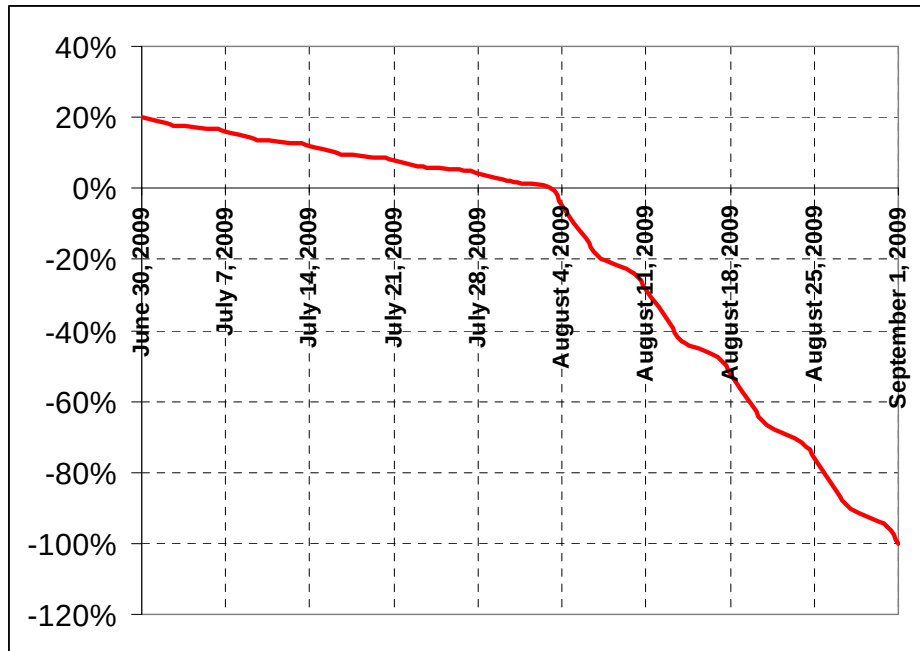
6.9 Incentive and Penalty Clauses

The contract shall contain incentive and penalty clauses regarding the completion date for Phase One. For example:

Incentive: For each business day that completion of Phase One is achieved before August 3rd, 2009, the contractor may add up to an additional 1% to the total cost of Phase One, not to exceed 20% total additional charge. See illustration below.

Penalty: For each working day that completion of Phase One is achieved after August 3rd, 2009 the state may deduct no more than 5% from the total cost owed on Phase One. See illustration below. If Phase One is not complete by September 1st, 2009,

the state will owe nothing to the contractor for Phase One (regardless of any work completed) and any Performance Bond may be forfeited. The balance of the contract may also be terminated for cause.



The agreed to incentive and penalty clauses shall also be incorporated into the performance standards of the contract.

6.10 Performance Bond;

The Resulting Contract will require the successful Contractor to maintain a performance bond in accordance with the contractual provisions in the amount of 20% of the entire contract est. value as proposed. Bidder shall reveal the amount of the proposed bond and the bond's cost as a separate non-billable line item as a foot note in its' Cost Proposal.

6.11 Software Source Code Delivery

In regards to License Agreement Section 2.2 - Delivery of Source Code, bidder shall itemize in its Technical Proposal which software code will be delivered to the State and itemize which code must be put into escrow per Section 2.3. Bidder shall reveal the cost of escrow as a separate non-billable line item as a foot note in its' Cost Proposal.

6.12 Non-Negotiable Provisions of the Contract:

Above Sections 6.1, 6.10 and 6.11 as well as Sections 11.4.1 and 11.4.2 in Attachment 5 shall be non-negotiable. Proposals that contain exceptions to these provisions shall be grounds for immediate disqualification.

RFP Exhibit A Design of Web Service Proxy

Project: College Student Aid Commission (CSAC) Web Portal

Title: Design of Web Service Proxy

Date Created: 12/31/2008

Last Updated: 1/8/2009

Version: 0.2 (subject to change)

Overview

The CSAC web portal project will integrate data from a number of different state agency systems with data in the web portal. Web service technology makes it possible to integrate disparate systems implemented in different technologies. The basic design goal is to make the service supporting integration as simple and robust as possible. The following design is subject to change.

High Level Requirements

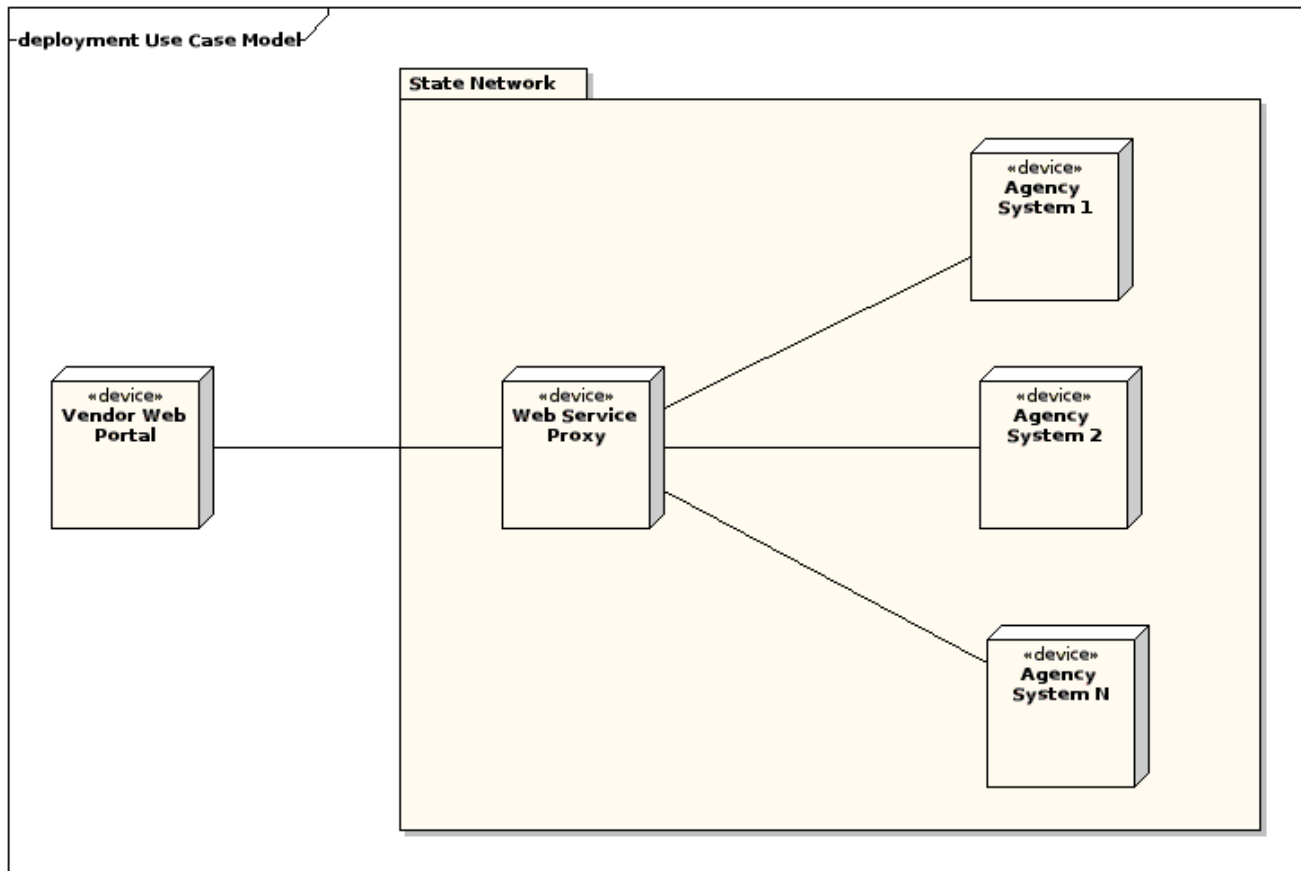
To ensure all points of integration are identified in this high level design it is important some high level requirements for this data integration be agreed upon. Please note that these are only high level requirements and each requirement below will likely have multiple detailed functional and non-functional requirements created in order to facilitate it.

1. Updates to user data can occur in the vendor web portal and any state agency system; therefore data must be shared in a manner that allows the data in sync.
2. The system allows any participating system to indicate if it supplies user data and/or wishes to receive updates to user data.
3. The data on a user will be dispersed across any number of systems; therefore the system must thread each call so that the requests can be processed simultaneously.
4. Each request made to the system must produce a unique transaction ID, error code (if any) and the data in the response.
5. The system must log all requests to a database with additional file-based logging left as a future decision.
6. The system must be able to cache responses. Each participating system (i.e. the vendor system and any state agency system) should specify time-to-live cache values for each web service method it supports.
7. Enterprise A&A will be used to authenticate calls to the system. Assuming each system has requirements for doing its own authentication, it will be up to the sponsoring agency to provide the credentials needed to make the call.
8. A dashboard must be provided that provides access to the logs and the ability to search.

High Level Design Proposal

The basic design being proposed will rely heavily on web services as the means for communication between the various moving parts. The recommendation would be to use SOAP as the web service implementation, though, other alternatives such as REST and XML RPC would be considered. Should SOAP be the selected web service protocol, a

WSDL should be established as the contract between all systems. Therefore, if there is the vendor system, web service proxy and N agency system, there would need to be N+2 WSDL files established. The basic topography would look as follows:



Please note the diagram above assumes the vendor web portal will be hosted by the vendor. If Information Technology Enterprise (ITE) hosts the web portal, the Vendor Web Portal box above would move inside the State Network boundary.

The Application Program Interface (API)

As previously mentioned the web service proxy does nothing more than allow handshakes to occur between different systems. This can be done with a simple interface with the following methods:

- **getPersonByID()** – This method makes a request to all systems to get the data for the given person the given ID. The return would likely be a set of key-value pairs (see below).
- **updatePerson()** - This method allows a change made to a person in system to be propagated to the other participating systems. The data about a person given would be the same basic structure as the return value in **getPersonByID()**.
- **searchPeople()** - This is a generic search method that provides key-

value pairs of field to search and search value. It would return a set of person records using the same basic structure as the return value in `getPersonById()`.

- `getSchoolById()` - this method makes a request to all systems to get the data for the given school using the given ID. The return would be a set of key value pairs (See below)
- `updateSchool()` - This method allows a change made to a school in system to be propagated to the other participating systems. The data about a person given would be the same basic structure as the return value in `getSchoolById()`.
- `searchSchools()` - This is a generic search method that provides key-value pairs of field to search and search value. It would return a set of school records using the same basic structure as the return value in `getSchoolById()`.

The API is quite simple with only three methods. The power in the API has to be in how the data (people and schools) is structured. The proposed method for passing user information follows:

1. Owner (Name of agency or organization that owns the data given).
2. Application ID – A unique ID assigned by the web service proxy during the first deployment uniquely identifying the application. This is important as each application has different configuration values registered with the proxy service (e.g. cache time-to-live, server host, server IP, etc)
3. Transaction ID – Optional but strongly encouraged, the application making the response can give it's own unique transaction ID allow us to troubleshoot calls across systems.
4. Response Type – Indicates the type of response received. The complete set of possible response types needs to be addressed during detailed design.
5. Response Text – any human readable text that might make troubleshooting easier.
6. People (or Schools) – A collection of person or school objects depending on the method called. Each person or school object consists of key value pairs. It is important that during detailed design the complete set of attributes are discussed as it will be important each system understands what each data item will be. Thought should also be given to accommodate a bit more complex data structures without giving up much in the way of flexibility.

One outstanding issue is the need for combining information and trust levels. For example, if a call to `getPersonById()` returns data from N agency systems and all contain First Name how does the system handle the situation? If an `updatePerson()` call is made, will it be assumed that the called systems handle the trust issues or will the web service proxy handle the issue?

Configuration Parameters

1. For the web service proxy to be effective, the service will require each
2. each.
3. Enable Cache – Indicates if web service is caching calls or not. The alternative would be to have the owner cache calls on their side. By doing it in the service we can implement caching once that can be shared by all applications (particularly if they don't support caching).
4. TTL – global time-to-live (TTL) value for API calls that return data (right now only searchPeople() and getPersonByID()).
5. Service Username – Username the web service proxy should use when authenticating to application.
6. Service Password – Password the web service proxy should use when authenticating to application.

Detailed Design Considerations

As this project moves forward, more design decisions will need to be made based on participation with other state agencies. The issues include:

1. How will each system require the proxy web service to perform authentication?
2. If special functionality is needed from one system and it doesn't fit the defined API above, then either direct calls will be made (i.e. bypass the proxy service) or the API will be expanded.
3. Per the API above, what ID for people and schools will be used? Using the SSN should be avoided (although part of the SSN may be OK). Replacing the ID with a concatenated key (several fields that together are unique) or tracking multiple unique ID's to accommodate each system could be considered.
4. Can all participating systems provide transaction ID's with each call?
5. What set of Response Types should be used?
6. What superset of person attributes should be used? Are key-value pairs sufficient? This decision will be based on collaboration between the partner agencies and the vendor selected.
7. How do we handle trust relationships for updates?
8. How do we handle same attributes, different values with respects to user data?
9. Should offline batching of updatePerson() and updateSchool() calls be allowed?

Senate File 2216 - Enrolled

PAG LIN

SENATE FILE 2216

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AN ACT

1 4 CONCERNING STATE AND LOCAL MEASURES FOR PREPARING A STUDENT FOR

1 5 A CAREER OR FOR POSTSECONDARY EDUCATION, INCLUDING A STATE-

1 6 WIDE CORE CURRICULUM FOR SCHOOL DISTRICTS AND ACCREDITED

1 7 NONPUBLIC SCHOOLS AND A STATE-DESIGNATED CAREER INFORMATION

1 8 AND DECISION-MAKING SYSTEM.

1 9

1 10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 11

1 12 Section 1. Section 256.7, subsections 26 and 28, Code

1 13 Supplement 2007, are amended to read as follows:

1 14 26. a. Adopt rules that establish a ~~voluntary model~~ core

1 15 curriculum and requiring, beginning with the students in the

1 16 2010=2011 school year graduating class, high school graduation

1 17 requirements for all students in school districts and

1 18 accredited nonpublic schools that include at a minimum

1 19 satisfactory completion of four years of English and language

1 20 arts, three years of mathematics, three years of science, and

1 21 three years of social studies. The ~~voluntary model~~ core

1 22 curriculum adopted shall address the core content standards in

1 23 subsection 28 and the skills and knowledge students need to be

1 24 successful in the twenty=first century. The ~~voluntary model~~

1 25 core curriculum shall include social studies and twenty=first

1 26 century learning skills which include but are not limited to

1 27 civic literacy, health literacy, technology literacy,

1 28 financial literacy, and employability skills; and shall

1 29 address the curricular needs of students in kindergarten

1 30 through grade twelve in those areas. For purposes of this1 31 subsection, "financial literacy" shall include but not be1 32 limited to financial responsibility and planning skills; money1 33 management skills, including setting financial goals, creating1 34 spending plans, and using financial instruments; applying1 35 decision-making skills to analyze debt incurrence and debt2 1 management; understanding risk management, including the2 2 features and functions of insurance; and understanding saving2 3 and investing as applied to long-term financial security and2 4 asset building.2 5 b. ~~The state board shall continue~~ Continue the inclusive2 6 process begun during the initial development of a ~~voluntary~~2 7 ~~model~~ core curriculum for grades nine through twelve including

2 8 stakeholder involvement, including but not limited to

2 9 representatives from the private sector and the business

2 10 community, and alignment of the ~~voluntary model~~ core

2 11 curriculum to other recognized sets of national and

2 12 international standards. The state board shall also recommend

2 13 quality assessments to school districts and accredited

2 14 nonpublic schools to measure the ~~voluntary model~~ core

2 15 curriculum.

2 16 The state board shall not require school districts or
2 17 accredited nonpublic schools to adopt a specific textbook or
2 18 textbook series to meet the core curriculum requirements of
2 19 this subsection or the core content standards adopted pursuant
2 20 to subsection 28.

2 21 28. Adopt a set of core content standards applicable to
2 22 all students in kindergarten through grade twelve in every
2 23 school district and accredited nonpublic school. For purposes
2 24 of this subsection, "core content standards" includes reading,
2 25 mathematics, and science. The core content standards shall be
2 26 identical to the core content standards included in Iowa's
2 27 approved 2006 standards and assessment system under Title I of
2 28 the federal Elementary and Secondary Education Act of 1965, 20
2 29 U.S.C. } 6301 et seq., as amended by the federal No Child Left
2 30 Behind Act of 2001, Pub. L. No. 107=110. School districts and
2 31 accredited nonpublic schools shall include, at a minimum, the
2 32 core content standards adopted pursuant to this subsection in
2 33 any set of locally developed content standards. School
2 34 districts and accredited nonpublic schools are strongly
2 35 encouraged to ~~include the voluntary model core curriculum or~~
3 1 set higher expectations in local standards. As changes in
3 2 federal law or regulation occur, the state board is authorized
3 3 to amend the core content standards as appropriate.

3 4 Sec. 2. Section 256.9, Code Supplement 2007, is amended by
3 5 adding the following new subsection:

3 6 NEW SUBSECTION. 57. Develop and distribute, in
3 7 collaboration with the area education agencies, core
3 8 curriculum technical assistance and implementation strategies
3 9 that school districts and accredited nonpublic schools may
3 10 utilize, including but not limited to the development and
3 11 delivery of formative and end-of-course assessments classroom
3 12 teachers can use to measure student progress on the core
3 13 curriculum adopted pursuant to section 256.7, subsection 26.
3 14 The department shall continue to collaborate with Iowa testing
3 15 programs on the development of end-of-course and additional
3 16 assessments to align with the expectations included in the
3 17 Iowa core curriculum.

3 18 Sec. 3. Section 256.9, Code Supplement 2007, is amended by
3 19 adding the following new subsection:

3 20 NEW SUBSECTION. 58. Submit an annual report to the
3 21 general assembly by January 1 regarding activities, findings,
3 22 and student progress under the core curriculum established
3 23 pursuant to section 256.7, subsection 26. The annual report
3 24 shall include the state board's findings and recommendations.

3 25 Sec. 4. Section 279.61, Code Supplement 2007, is amended
3 26 to read as follows:

3 27 279.61 STUDENT PLAN FOR PROGRESS TOWARD UNIVERSITY
3 28 ADMISSIONS == REPORT.

3 29 1. For the school year beginning July 1, ~~2007~~ 2008, and
3 30 each succeeding school year, the board of directors of each
3 31 school district shall cooperate with each student enrolled in
3 32 grade eight to develop for the student a core curriculum plan
3 33 to guide the student toward the goal of successfully
3 34 completing, at a minimum, the ~~voluntary model~~ core curriculum
3 35 developed by the state board of education pursuant to section
4 1 256.7, subsection 26, by the time the student graduates from
4 2 high school. The plan shall include career options and shall

4 3 identify the coursework needed in grades nine through twelve
 4 4 to support the student's postsecondary education and career
 4 5 options. Additionally, the plan shall include a timeline for
 4 6 each student to successfully complete, prior to graduation,
 4 7 all components of the state-designated career information and
 4 8 decision-making system administered by the department in
 4 9 accordance with section 118 of the federal Carl D. Perkins
 4 10 Career and Technical Education Improvement Act of 2006, Pub.
 4 11 L. No. 109-270. The student's parent or guardian shall sign
 4 12 the core curriculum plan developed with the student and the
 4 13 signed plan shall be included in the student's cumulative
 4 14 records.
 4 15 2. For the school year beginning July 1, ~~2007~~ 2008, and
 4 16 each succeeding school year, the board of directors of each
 4 17 school district shall report annually to each student enrolled
 4 18 in grades nine through twelve in the school district, and, if
 4 19 the student is under the age of eighteen, to each student's
 4 20 parent or guardian, the student's progress toward meeting the
 4 21 goal of successfully completing the core curriculum and high
 4 22 school graduation requirements adopted by the state board of
 4 23 education pursuant to section 256.7, subsection 26.
 4 24 Sec. 5. Section 280.3, Code 2007, is amended to read as
 4 25 follows:
 4 26 280.3 ~~DUTIES OF BOARD~~ EDUCATIONAL PROGRAM == ATTENDANCE
 4 27 CENTER REQUIREMENTS.
 4 28 1. The board of directors of each public school district
 4 29 and the authorities in charge of each nonpublic school shall
 4 30 prescribe the minimum educational program and an attendance
 4 31 policy which shall require each child to attend school for at
 4 32 least one hundred forty-eight days, to be met by attendance
 4 33 for at least thirty-seven days each school quarter, for the
 4 34 schools under their jurisdictions.
 4 35 2. The minimum educational program shall be the curriculum
 5 1 set forth in subsection 3 of this section and section 256.11,
 5 2 except as otherwise provided by law. The board of directors
 5 3 of a public school district shall not allow discrimination in
 5 4 any educational program on the basis of race, color, creed,
 5 5 sex, marital status or place of national origin.
 5 6 3. The board of directors of each public school district
 5 7 and the authorities in charge of each nonpublic school shall
 5 8 do all of the following:
 5 9 a. Adopt an implementation plan by July 1, 2010, which
 5 10 provides for the adoption of at least one core curriculum
 5 11 subject area each year as established by the state board of
 5 12 education for grades nine through twelve pursuant to section
 5 13 256.7, subsection 26. The core curriculum established for
 5 14 grades nine through twelve by the state board of education
 5 15 pursuant to section 256.7, subsection 26, shall be fully
 5 16 implemented by each school district and school by July 1,
 5 17 2012.
 5 18 b. Adopt an implementation plan, by July 1, 2012, which
 5 19 provides for the full implementation of the core curriculum
 5 20 established for kindergarten through grade eight by the state
 5 21 board of education pursuant to section 256.7, subsection 26,
 5 22 by the 2014-2015 school year.
 5 23 4. A nonpublic school which is unable to meet the minimum
 5 24 educational program may request an exemption from the state

5 25 board of education. The authorities in charge of the
5 26 nonpublic school shall file with the director of the
5 27 department of education the names and locations of all schools
5 28 desiring to be exempted and the names, ages, and post office
5 29 addresses of all pupils of compulsory school age who are
5 30 enrolled. The director, subject to the approval of the state
5 31 board, may exempt the nonpublic school from compliance with
5 32 the minimum educational program for two school years. When
5 33 the exemption has once been granted, renewal of the exemption
5 34 for each succeeding school year may be conditioned by the
5 35 director, with the approval of the board, upon proof of
6 1 achievement in the basic skills of arithmetic, the
6 2 communicative arts of reading, writing, grammar, and spelling,
6 3 and an understanding of United States history, history of
6 4 Iowa, and the principles of American government, of the pupils
6 5 of compulsory school age exempted in the preceding year.
6 6 Proof of achievement shall be determined on the basis of tests
6 7 or other means of evaluation prescribed by the director of the
6 8 department of education with the approval of the state board
6 9 of education. The testing or evaluation, if required, shall
6 10 be accomplished prior to submission of the request for renewal
6 11 of the exemption. Renewal requests shall be filed with the
6 12 director by April 15 of the school year preceding the school
6 13 year for which the applicants desire exemption. This section
6 14 shall not apply to schools eligible for exemption under
6 15 section 299.24.

6 16 5. The board of directors of each public school district
6 17 and the authorities in charge of each nonpublic school shall
6 18 establish and maintain attendance centers based upon the needs
6 19 of the school age pupils enrolled in the school district or
6 20 nonpublic school. Public school kindergarten programs shall
6 21 and public and nonpublic school prekindergarten programs may
6 22 be provided. In addition, the board of directors or governing
6 23 authority may include in the educational program of any school
6 24 such additional courses, subjects, or activities which it
6 25 deems fit the needs of the pupils.

6 26 Sec. 6. DEPARTMENT OF EDUCATION == CORE CURRICULUM STUDY.
6 27 The department of education shall conduct a study of the
6 28 measures necessary for the successful adoption by the state's
6 29 school districts and accredited nonpublic schools of core
6 30 curriculums and core content standards established by rule
6 31 pursuant to section 256.7, subsections 26 and 28. The
6 32 department shall submit its findings and recommendations,
6 33 including recommendations for statutory and administrative
6 34 rule changes necessary, to the general assembly by November
6 35 14, 2008.

7 1 Sec. 7. STATE MANDATE FUNDING SPECIFIED. In accordance
7 2 with section 25B.2, subsection 3, the state cost of requiring
7 3 compliance with any state mandate included in this Act shall
7 4 be paid by a school district from state school foundation aid
7 5 received by the school district under section 257.16. This
7 6 specification of the payment of the state cost shall be deemed
7 7 to meet all of the state funding-related requirements of
7 8 section 25B.2, subsection 3, and no additional state funding
7 9 shall be necessary for the full implementation of this Act by
7 10 and enforcement of this Act against all affected school
7 11 districts.

7 12

7 13

7 14

7 15

JOHN P. KIBBIE

7 16

President of the Senate

7 17

7 18

7 19

7 20

PATRICK J. MURPHY

7 21

Speaker of the House

7 22

7 23 I hereby certify that this bill originated in the Senate and
7 24 is known as Senate File 2216, Eighty=second General Assembly.

7 25

7 26

7 27

7 28

MICHAEL E. MARSHALL

7 29

Secretary of the Senate

7 30 Approved _____, 2008

7 31

7 32

7 33

7 34 CHESTER J. CULVER

7 35 Governor

RFP Exhibit C
State Components for Career Information System

Grade Level	Students will be able to:
Grade 7/ 8	➤ Take and save assessment on personal interests and skills. ➤ Research and save top career choice to portfolio. ➤ Take and save assessment inventory on career clusters based on interest and skills. ➤ Choose a program or major based on assessments. ➤ Develop a course plan based on interests from assessments. ➤ Parent reviews and approves 8th grade plan for high school with signature or approval form. ➤ Portfolio Summary form created.
Grade 9	➤ Take and save an assessment on personal interests and skills. ➤ Research and save favorite careers in the portfolio. ➤ Take and save skill assessment/survey and link to careers. ➤ Review and revise course plan sequence or create new course plan. ➤ Review plan with parents and high school counselor/ advisor.
Grade 10	➤ Take and save an additional assessment or repeat assessment on personal interests and skills. ➤ Review previous assessments for alignment to career plan. ➤ Research top 3 program/major choices. ➤ Research top 3 schools choices. ➤ Revise course plan or create new plan. ➤ Complete a reflection activity about career choices and decision.
Grade 11/12	➤ Take and save assessment on skills. ➤ Write a complete resume. ➤ Write a cover letter for job application. ➤ Write a thank-you letter for interview. ➤ Research sources of financial aid for postsecondary education (if applicable to career plan). ➤ Review, research and explore education and training options. ➤ Narrow career choices and post-secondary plans. ➤ Review and revise career plan ➤ Review and revise course plan. ➤ Complete reflection activity on career and course plan for education and training after high school.

RFP ATTACHMENT 1 – Certification Letter

Alterations to this document are prohibited

[Date]_____

Laurie Hoing, Issuing Officer
Iowa Department of Administrative Services, GSE
Hoover State Office Building, Level A
Des Moines, IA 50319

Re: Request for Proposal Number RFP1109284245
PROPOSAL CERTIFICATIONS

Dear Laurie:

I certify that the contents of the Bid Proposal submitted on behalf of _____**[Name of Vendor]** in response to Iowa Department of Administrative Services for Proposal Number RFP1109284245 for an Iowa Statewide Community Center Web Portal are true and accurate. I also certify that _____**[Name of Vendor]** has not made any knowingly false statements in its Bid Proposal.

Certification of Independence

By submitting a Bid Proposal in response to Iowa Department of Administrative Services Request for Proposal Number RFP1109284245 for an Iowa Statewide Community Center Web Portal (RFP), I certify the following:

1. The Bid Proposal has been developed independently, without consultation, communication or agreement with any employee or consultant to Lead Agency or any Participating Agency who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee.
2. The Bid Proposal has been developed independently, without consultation, communication or agreement with any other Vendor or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the Bid Proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the award of the contract, directly or indirectly, to any other Vendor.
4. No attempt has been made or will be made by _____**[Name of Vendor]** to induce any other Vendor to submit or not to submit a Bid Proposal for the purpose restricting competition.
5. No relationship exists or will exist during the contract period between _____**[Name of Vendor]** and Lead Agency or any Participating Agencies that interferes with fair competition or as a conflict of interest.

Certification Regarding Debarment

6. I certify that, to the best of my knowledge, _____**[Name of Vendor]** and all of its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency; (b) have not within a three year period preceding this Bid Proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, or 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 or commission of embezzlement, theft,

forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or other criminally or civilly charged by a government entity (federal, state, or local) with Lead Agency of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this Bid Proposal had one or more public transactions (federal, state, or local) terminated for cause.

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

Certification Re: Registration, Collection, and Remission of Sales & Use Tax

7. Pursuant to Iowa Code sections 423.2(10) & 423.5(8) (2005 Code Supp.) 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 Vendors 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 Bid Proposal in response to Iowa Department of Administrative Services Request for Proposal Number RFP1109284245 for an Iowa Statewide Community Center Web Portal (RFP), the undersigned certifies the following: (check the applicable box)

☐ _____ **[name of Vendor]** is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 432; or

☐ _____ **[name of Vendor]** 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(42) & (43).

_____ **[name of Vendor]** also acknowledges that the Iowa Department of Administrative Services may declare the _____ **[name of Vendor]**'s bid or resulting contract void if the above certification is false. The _____ **[name of Vendor]** also understands that fraudulent certification may result in the Iowa Department of Administrative Services or its representative filing for damages for breach of contract.

Sincerely,

[Name and Title]

RFP ATTACHMENT 2 - Authorization To Release Information

Alterations to this document are prohibited

Date_____

Laurie Hoing, Issuing Officer
Iowa Department of Administrative Services, GSE
Hoover State Office Building, Level A
Des Moines, IA 50319

Re: AUTHORIZATION TO RELEASE INFORMATION

Dear Laurie:

_____ **[Name of Vendor]** hereby authorizes the Iowa Department of Administrative Services 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 vendor in response to Lead Agency's Request for Proposals for collection services.

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

Vendor hereby releases, acquits and forever discharges the State of Iowa, Lead 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 Lead Agency in the evaluation and selection of a successful vendor in response to this Request for Proposals.

Vendor authorizes representatives of Lead Agency to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the undersigned's proposal submitted in response to this Request for Proposals.

Vendor further authorizes any and all persons or entities to provide information, data, and opinions with regard to the undersigned's performance under any contract, agreement, or other business arrangement, the undersigned's ability to perform, the undersigned's business reputation, and any other matter pertinent to the evaluation of the undersigned. The undersigned 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 undersigned that it may have or ever claim to have relating to information, data, opinions, and references supplied to Lead Agency in the evaluation and selection of a successful vendor in response to this Request for Proposals.

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

Sincerely,

Printed Name of Vendor Organization

Name and Title of Authorized Representative

Date

RFP Attachment 3 –Submittal Check List

Bidder's Name: _____

Mailing Address: _____

City, State, & Zip Code: _____

Telephone Number (Incl. Area Code): _____

FAX Number: _____

Signature of Officer: _____

Printed Name: _____

Title: _____

Email Address: _____

Federal ID Number: _____ (Attach completed W9 form)

Date: _____

RFP REFERENCE	RESPONSE INCLUDED		LOCATION IN PROPOSAL
	Yes	No	
3.1.3 Original Technical Proposal with copy on CD			
3.1.3 Seven (7) Paper Copies			
3.1.4 Optional "Public Copy" with copy on CD			
3.3 Separately Sealed Cost Proposal (& copy on CD)			
3.2.1 Transmittal Letter			
3.2.2 Table of Contents & this Attachment			
3.2.3 Executive Summary			
3.2.4 Specifications and Technical Requirements:			
4.4.1 Implementation Schedule			
4.4.2 ACSCI Standards			
4.4.3 Access & Ownership to Data			
4.4.4 Enterprise A&A			
4.4.5 Career Information (CI) System			
4.4.6 Performance and Scalability			
4.4.7 Functionality of Vendor CI System			
4.4.7.1 User Repository and Electronic Portfolio			
4.4.7.2 Occupation Database			
4.4.7.3 Self-Assessment Tools			
4.4.7.4 Other types of self-assessments			
4.4.7.5 Education and Training Information			
4.4.7.6 Job Search Activities			
4.4.7.7 Education and Career Planning			
4.4.7.8 Financial Aid Information			
4.4.7.9 Scholarship Search			

RFP REFERENCE	RESPONSE INCLUDED		LOCATION IN PROPOSAL
	Yes	No	
4.4.7.10 Educator Resources and Tools			
4.4.7.11 Educators Access			
4.4.7.12 State Components			
4.4.7.13 Interactive Planning Tools			
4.4.7.14 Electronic Communication Tools			
4.4.7.15 College Planning			
4.4.7.16 Customized Institution Admissions			
4.4.8 Search and Sorting Requirements			
4.4.9 Printer Friendly Requirements			
4.4.10 Localization			
4.4.11 Data in the system			
4.4.12 Reporting Capabilities			
4.4.13 Migration of Current Data			
4.4.14 Multiple Languages			
4.4.15 Financial Aid Calculators			
4.4.16 Access Control			
4.4.17 Security			
4.4.18 Customizations			
4.4.19 Universal Design			
4.4.20 Training and Professional Development			
4.4.21 Technical Support			
4.4.22 Audit Trail			
4.4.23 Hosting			
4.4.23 State's Operating Environment			
4.4.24 Architecture			
4.4.25 System Integration & Compatibility -			
4.5 Work Plan			
4.6 Third Party Software and Hardware			
3.2.7 Background Information including:			
3.2.7.6 Vendor's Representative contact info			
3.2.7.10 Subcontractors			
3.2.8 Company Experience & Qualifications, incl:			
3.2.8.5 Three (3) references			
3.3.8.6 Resumes of Key Personnel			
3.2.9 Financial Information			
3.2.10 Terminations, Litigations etc			
3.2.11 Acceptance of Terms and Conditions			
3.2.12, 13 and 14 Signed Certifications			

Attachment 4 - Cost Proposal Format

Bidder's Name: _____ Mailing Address: _____
 City, State, & Zip Code: _____
 Telephone Number (Incl. Area Code): _____ FAX Number: _____
 Signature of Officer: _____ Email Address: _____
 Printed Name: _____
 Title: _____ Federal ID Number: _____ (Attach W9 form)
 Date: _____

Unless otherwise specified herein, Cost Proposal shall include an all-inclusive, itemized, total cost in U.S. Dollars (including all travel, expenses, etc. in prices). All pricing to be FOB Destination, freight cost and all expenses included; and based on Net 60 Days Payment Terms. The following template is required. Please use additional pages to provide any additional narrative support for the costing information.

The cost proposal shall include each stage in the table below. Payment for each stage will be made according to the table below, and be contingent upon test and user final acceptance. The cost proposal shall also specify the hourly rates for post-development support.

Deliverable Items I.E: Please breakout Services from Initial Software Costs	Firm US Dollars					
	Year One	Year Two	Year Three	Year Four	Year Five	Year Six
Phase One:						
Career Information (CI) System:						
4.4.7.1 User Electronic Portfolio						
4.4.7.2 Occupation Database						
4.4.7.3 Self-Assessment Tools						
4.4.7.4 Other types						
4.4.7.5 Education and Training Info						
4.4.7.6 Job Search Activities						
4.4.7.7 Education & Career Planning						
4.4.7.8 Financial Aid Information						
4.4.7.9 Scholarship Search						
4.4.7.10 Educator Resources & Tools						
4.4.7.11 Educators Access						
4.4.7.12 State Components						
4.4.7.13 Interactive Planning Tools						
4.4.7.14 Communication Tools						
4.4.7.15 College Planning						
4.4.7.16 Customized Admissions						
4.4.12 Reporting Capabilities						
4.4.13 Migration of Current Data						
4.4.15 Financial Aid Calculators						
4.4.22 Audit Trail						
Sub-Total:						

Phase Two:	Year One	Year Two	Year Three	Year Four	Year Five	Year Six
4.4.25 System Integration with:						
ICSAC Scholarship and Grant System						
Other State Agency Tools						
ICSAC Data Warehouse						
Iowa Dept of Education e-Transcripts						
State Enterprise e-Payment						
Iowa Student Information Systems						
Other Secondary / Post-Secondary Systems						
Sub-Total:						
Re-Occurring Annual Charges I.E:	Year One	Year Two	Year Three	Year Four	Year Five	Year Six
For Software Support & Maintenance (please itemize)						
For Software Updates (please itemize)						
4.4.11 For Maintenance of Data						
4.4.20 Training (provide all details)						
4.4.21 Technical Support						
4.4.23 Hosting						
Other (specify)						
Sub-Total:						
GRAND TOTALS for each year: Cumulative Totals:	Year One	Year Two	Year Three	Year Four	Year Five	Year Six

Footnotes I.E.:	Year One	Year Two	Year Three	Year Four	Year Five	Year Six
6.10 Amount & Cost of Performance Bond included in above total						
6.2 Cost of Software Escrow included in above total						
Costs of Optional Additional System Features if any offered (itemize)						
4.6 Recommended hardware, if applicable (itemize)						
4.6 Recommended software, if applicable (itemize)						
3.3.8 Rates for Change Requests (itemize by Discipline)						
Hourly rates for post-development support not otherwise covered by above						

Other Notes

Descriptions of the cost estimation methodologies used in this Proposal

RFP Attachment # 5

PROPOSED IT SERVICE CONTRACT

See also RFP Section # 6

This Agreement for professional services and other deliverables (this “Agreement”), made and effective as of [] (“Effective Date”), by and between the State of Iowa, acting by and through the Iowa Department of [] (“Department”) and [name of Vendor], a [corporation] organized under the laws of [] (“Vendor”). The parties agree as follows:

Section 1 - Purpose and Term

1.1 Purpose. The parties have entered into this Agreement for the purpose of retaining Vendor to provide professional services and other deliverables in connection with the [development and implementation of _____system] for the Department and the State of Iowa (the “State”).] [Describe specifically the types of services and any other deliverables being provided by Vendor – see definition of Deliverables and System].

1.2 Term. The initial term of this Agreement is for [three years], unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the Department shall have the option to extend this Agreement for three additional one-year renewal terms. The decision to extend the Agreement will be at the sole option of the Department and may be exercised by the Department by providing written notice to Vendor. The initial term of this Agreement is from [_____].

Section 2 - Definitions

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

2.1 “Acceptance” means that the Department has determined that one or more Deliverables satisfy the Department’s Acceptance Tests. Final Acceptance means that the Department has determined that all Deliverables and the System satisfy the Department’s Acceptance Tests. Non-acceptance means that the Department has determined that one or more Deliverables have not satisfied the Department’s Acceptance Tests.

2.2 “Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Department and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

2.3 “Acceptance Tests” or “Acceptance Testing” mean the tests, reviews and other activities that are performed by or on behalf of Department to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Department, as determined by the Department in its sole discretion. Acceptance Testing may include testing of individual or multiple units, modules or components, system or integration testing, user-acceptance testing, load/stress testing, system security testing, network testing, recovery/backup testing, data transfer, migration and conversion testing, and Documentation review.

2.4 “Confidential Information” means, means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “disclosing party”) to the other party (a “receiving party”) that, at the time of disclosure, is

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

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

2.6 “Deliverables” mean the System, Software, Source Code, Documentation, [hardware], goods, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor (or any agent, contractor or subcontractor of Vendor) in connection with this Agreement, and all related legal rights to own or use the same. Except as otherwise provided in this Agreement, Deliverables shall include any and all: inventions, ideas, concepts, discoveries, methodologies, processes, applications, programs, software, source code, object code, and any other code, language or programming in any stage of development, improvements, modifications, enhancements, upgrades, releases, works-in-progress, techniques, know-how, designs, creative works and original works of authorship, work product, derivative works, Specifications, data, databases, compositions of matter, drawings, notes, plans, papers, graphics, copy, artwork, images, templates, forms, reports, studies, screen designs, utilities, routines, tests, devices, materials, documents, information, content, and all other tangible and intangible works, materials and property of any kind and nature that are related to the Deliverables or created, developed, produced, delivered, or provided by or on behalf of, or made available through, Vendor (or any agent, contractor, subcontractor, subsidiary or affiliate of Vendor) in connection with this Agreement.

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

2.8 “Enhancements” means any and all updates, upgrades, patches, additions, modifications or other enhancements made by Vendor with respect to the Software, any new Vendor releases of Software, and all changes to the Documentation and Source Code made by Vendor as a result of such Enhancements.

2.9 “Project” means the project to [develop and implement the System] and all services and Deliverables to be performed and provided by Vendor as described in this Agreement.

2.10 “Project Completion Date” means the date by which Vendor must complete all work and provide all Deliverables pursuant to this Agreement. The Project Completion Date is _____.

2.11 “Project Plan” means the Project Plan attached hereto as Schedule B, as modified from time to time upon written agreement of the parties. The Project Plan is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

2.12 “Security” means the ability to protect from unauthorized access, use, disclosure, disruption, modification, or destruction the confidentiality, integrity, and availability of information systems and information processed, stored, and transmitted by an agency.

2.13 “Software” means the [describe specific software product(s)] listed in Schedule A and all other software, programs, applications and components that are developed or provided by or on behalf of the Vendor to the State pursuant to this Agreement [and/or licensed pursuant to the Software License Agreement]. The term “Software” shall include all Source Code, object code, Documentation and Enhancements for or related to the Software.

2.14 “Software License Agreement” means the Software License Agreement by and between Vendor and the Department dated _____.

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

2.16 “Specifications” mean all specifications, requirements, technical standards, performance standards, measures, representations and other criteria related to the Deliverables stated or expressed in this Agreement (including the Statement of Work and any other exhibits, schedules, appendices or other parts of this Agreement), [the Software License Agreement], Documentation, the RFP (as defined below), and the Proposal (as defined below). Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

2.17 “Statement of Work” means Schedule A to this Agreement, which describes, among other things, the Deliverables and services to be provided by Vendor under this Agreement and the fixed, not-to-exceed compensation and final delivery dates associated therewith. [Each Statement of Work will also include, without limitation: a description of the Vendor personnel or teams that will complete the work, including each Vendor’s personnel’s roles and responsibilities; a resource allocation plan; a detailed work breakdown structure; a communication plan; a payment schedule; a configuration management plan; a risk management plan; and detailed business and technical requirements.] The Statement of Work is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

2.18 "System" means the system generally described in Section 1.1 above and includes: [the sum total of the Software [or name the system application], the database systems, the network architecture, the security architecture and the associated hardware, Software and other Deliverables that will be created, delivered, developed, provided and implemented by Vendor for the Department under this Agreement, all technical design documents, software, databases, formats, Documentation, reports, memoranda, studies, plans, designs, specifications, statements, drawings, materials, Exhibits, Schedules and other documents or materials, in whatever media, developed by Vendor in the performance of work under this Agreement, as more fully described and specified in the Statements of Work.

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

2.20 "Third Party Software" means [Software licensed by Vendor from Third Parties and sub-licensed or otherwise furnished to Licensee in connection with this Agreement] or Software, firmware and other programs developed or acquired from parties other than Vendor.] [Third Party Software shall/shall not be considered Software under this Agreement.]

Section 3 - Documents Incorporated

3.1 Incorporation. The Department's 'Request for Proposal' No. _____ for _____ System ("RFP") and Vendor's proposal dated _____, in response to the RFP ("Proposal"), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of Vendor's proposed revisions or modifications to the sample Services Contract attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein.

3.2 Contractual Obligations. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any proposed revisions or modifications made by Vendor to the sample Services Contract attached to the RFP Proposal shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or the Department hereunder, unless expressly stated herein.

3.3 Preference. 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.

3.4 No Inconsistency. The references to the parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered 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 Department 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 Department.

Section 4 - Scope of Work

4.1 Statement of Work. Vendor shall provide the Department with the Deliverables in accordance with the Statement of Work (Schedule A) and all other terms and conditions of this Agreement.

4.2 Amendments to Statement of Work. The parties agree that the Statement of Work may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of the parties.

4.3 Delivery. Vendor shall deliver to the Department all Deliverables as set forth in Schedule A. Deliverables in the form of Documentation and Source Code must be clear, concise, factual and complete. Vendor shall provide all such Deliverables in both hard copy and electronic format (acceptable to the Department) and as otherwise required and noted herein or in the applicable Statement of Work.

4.4 Performance Standards. The parties agree that the performance standards and related payment, monitoring and review provisions set forth in Schedule C are incorporated herein by this reference as if fully set forth in this Agreement. [These must be mutually developed and included pursuant to 11 Iowa Admin. Code 11- 107.]

4.5 Department Not Required to Accept or Install Enhancements. Vendor shall not condition any of the Department's rights or Vendor's obligations under this Agreement, or any other contract related to the System or the Software, on the Department accepting or installing any Enhancements or additional functionality provided by Vendor.

4.6 Hardware. Vendor shall recommend to the Department all Third Party hardware necessary or desirable to be acquired to complete work and provide the Deliverables under this Agreement. At the Department's sole discretion, the Department will procure such Third Party hardware directly or require Vendor to procure or make available the Third Party hardware for the Department upon such terms and conditions as are acceptable to the Department. Vendor represents and warrants with respect to all Third Party hardware procured or made available by or through the Vendor that, upon delivery to the Department: such hardware will be new and unused; title to the hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions; the Department's use and possession of the hardware will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Vendor; and the hardware will be free of any rightful claim of any Third Person or entity based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

4.7 Third Party Software. Vendor shall recommend to the Department all Third Party Software necessary or desirable to be acquired to complete work and provide all Deliverables under this Agreement. At the Department's sole discretion, the Department will license such Third Party Software directly or request Vendor to license or sublicense the Third Party Software to or on behalf of the Department at the Department's expense. In the latter case, Vendor shall ensure that all Third Party Software or other materials provided pursuant to this Agreement shall be licensed to the Department pursuant to a license agreement, the terms and conditions of which must be acceptable to the Department.

4.8 Manufacturers' Warranties. At the Department's request, Vendor shall assign to the State and the Department all of the licensor's and manufacturer's warranties and indemnities pertaining to Third Party Software and Third Party hardware under any

license or other agreement between Vendor and any Third Parties relating to Third Party Software and Third Party hardware.

Section 5 - Compensation and Additional Rights and Remedies

5.1 Compensation. In consideration of Vendor providing the Department with the Deliverables in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such Deliverables as specified in Schedule A, subject to all terms and conditions of this Agreement, including, without limitation Section 5.2 (Invoices) and Section 5.3 (Retention). The Department shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement. All fees and compensation payable hereunder to Vendor are fixed, not-to-exceed amounts, and Vendor shall not be compensated on a time and materials basis. It is expressly understood and agreed that in no event will the total fees or compensation to be paid hereunder exceed the sum of \$_____. [Note: may also want to specify not-to-exceed maximums for any individual phases or groupings of Deliverables.] Vendor is not entitled to payment for any Deliverables provided under this Agreement if the Department reasonably determines that any Deliverables or services have not been satisfactorily or completely delivered or performed, or that any Deliverable fails to meet or conform to any applicable Specifications. No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the Department shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the Department or the State. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement.

5.2 Invoices. Upon [written receipt of notice of Acceptance from the Department with respect to one or more Deliverables], Vendor shall submit an invoice to the Department requesting payment of the fees or other compensation specified in Schedule A associated with [such Deliverable(s)], less the Retained Amount(s) to be withheld in accordance with Section 5.3. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Department. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Department may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Department shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Department believes the invoice is inaccurate or incorrect in any way.

5.3 Retention. To secure Vendor's performance under this Agreement, the Department shall retain 10% of the fees or other compensation associated with each Deliverable and payable hereunder shall be the "Retained Amounts". The Retained Amounts shall be payable upon the Department's delivery of written notice of Final Acceptance to Vendor, subject to the terms and conditions hereof.

5.4 Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Department the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the Department of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund

any amounts due the Department under this section 5.4, the Department will charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Department may, in its sole discretion, elect to have Vendor apply any amounts due to the Department under this Section 5.4 against any amounts payable by the Department under this Agreement [or the Software License Agreement].

5.5 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.

5.6 Set-off Against Sums Owed by Vendor. In the event that Vendor owes the Department or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Department may set off such sum against any sum invoiced to the Department by Vendor in the Department's sole discretion unless otherwise required by law. Any amounts due to the Department as liquidated damages or any other damages may be deducted by the Department without a judgment or any court action from any money or sum payable by the Department to Vendor pursuant to this Agreement or any other agreement between Vendor and the Department.

5.7 Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Department may withhold compensation or payments to Vendor, in whole or in part, without penalty to the Department or work stoppage by Vendor, in the event the Department determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement [and/or the Software License Agreement]; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Department under this Agreement.

5.8 Correction/Cure. The Department may correct any Deficiencies with respect to any Deliverable or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the Department. The Department may provide or procure the services reasonably necessary to correct any Deficiencies or cure any Vendor default, in which event Vendor shall reimburse the Department for the actual costs incurred by the Department for such services (or for the reasonable value of the time expended by any Department or State employees who provide such services). In addition, Vendor shall cooperate with the Department or any Third Parties retained by the Department who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor.

5.9 Error Correction. With respect to each notice from the Department to Vendor during the term of this Agreement that notifies Vendor that the System or any Deliverable delivered by Vendor (and previously accepted by the Department) contains or experiences a Deficiency, Vendor shall, at no cost to the Department, promptly (a) correct the Deficiency and repair the affected Deliverable, and (b) provide the Department with all necessary materials with respect to such repaired or corrected Deliverable,

including without limitation the provision of new Source Code, master program disks or other media acceptable to the Department and related Documentation.

5.10 Monitoring and Review. The Department shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring shall include the Department's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

Section 6 - Acceptance Tests, Project Management, Key Personnel and Liquidated Damages

6.1. Vendor shall commence and complete all work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Specifications and other requirements specified in this Agreement, including those which may be specified in the Statement of Work and the Project Plan. Vendor shall deliver, install and complete all services and provide all Deliverables no later than the Project Completion Date.

6.2 All Deliverables shall be subject to the Department's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to the Department certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Department to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Department. At the Department's request, Vendor shall assist the Department in performing Acceptance Tests at no additional cost to the Department. Within a reasonable period of time after the Department has completed its Acceptance Testing, the Department shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Department determines that a Deliverable satisfies its Acceptance Tests, the Department shall provide Vendor with notice of Acceptance with respect to such Deliverable. If the Department determines that a Deliverable fails to satisfy its Acceptance Tests, the Department shall provide Vendor with notice of Non-acceptance with respect to such Deliverable. In the event the Department provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to the Department within ten (10) days of Vendor's receipt of notice of Non-acceptance so that the Department may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Department determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Vendor has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy its Acceptance Tests, then the Department shall have the continuing right, at its sole option, to: (i) require Vendor to correct and repair such Deliverable within such period of time as the Department may specify in a written notice to Vendor; (ii) refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable); (iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Department's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Department to correct such Deficiencies; or (iv) terminate this Agreement and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 10 of this Agreement, the Department may terminate this Agreement pursuant to this Section 6.2 without providing Vendor with any notice or opportunity to cure provided for in Section 10. The Department's right to exercise the foregoing rights and remedies, including termination of this Agreement, shall remain in effect until Acceptance Tests are successfully completed to the Department's satisfaction and the

Department has provided Vendor with written notice of Final Acceptance. If the Department determines that all Deliverables satisfy its Acceptance Tests, the Department shall provide Vendor with notice of Final Acceptance with respect to such Deliverables. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Department's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any Deficiency is later discovered with respect to such Deliverable(s).

6.3 Project Management and Reporting.

6.3.1 Project Manager. At the time of execution of this Agreement, Vendor shall designate, in writing, a Project Manager acceptable to the Department to serve until the expiration of this Agreement. Vendor will assign a Project Manager of a management level sufficient to assure timely responses from all Vendor personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the Department prior to her or his appointment as Vendor's Project Manager. Vendor represents that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions pursuant to this Agreement on behalf of and for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Department's site as needed during the course of work under this Agreement and will be available either in person, by telephone or E-mail to respond promptly (in no event more than [2] hours after receipt of a request or inquiry from the Department) during the business day to inquiries from the Department.

6.3.2 Review Meetings. Commencing with performance of this Agreement, Vendor's Project Manager shall meet weekly with the Department's project manager and representatives, unless otherwise mutually agreed, to discuss progress made by the Vendor in the performance of this Agreement. At each review meeting, Vendor's Project Manager shall provide a status report, which includes, at minimum, the information described in Section 6.3.3 and describes any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any party has identified in writing a problem, the Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance under this Agreement.

6.3.3 Reports. Vendor shall provide the Department with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, proposed changes to the Project Plan, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Department may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Department's approval.

6.3.4 Problem Reporting Omissions. The Department's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that the Department may have. The Department's failure to identify the extent of a

problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance under this Agreement.

6.3.5 Change Order Procedure. The Department may at any time request a modification to the scope of the Statement of Work using a change order. The following procedures for a change order shall be followed:

6.3.5.1 Written Request. The Department shall specify in writing the desired modifications to the Statement of Work with the same degree of specificity as in the original Statement of Work.

6.3.5.2 Vendor's Response. Vendor shall submit to the Department any proposed modifications to the Project Plan and a firm cost proposal, if applicable, for the requested change order within five (5) business days of receiving the Department's change order request. Vendor agrees that there shall be no additional cost or Vendor compensation for or with respect to any change order requests for modifications, Deliverables, modules or functionality that are envisioned in, conceptually similar in nature to, or consistent with, the RFP or the Proposal.

6.3.5.3 Effect of Change Order. Both parties must sign and date the change order to authorize the change in Deliverables described therein and incorporated the changes into the Statement of Work and this Agreement. No services shall be performed pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both parties. Upon such execution, a change order shall alter only that portion of a Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement.

6.4 Key Personnel. The Department considers [name project manager and any other key personnel of Vendor, or specify on a separate schedule] from Vendor to be essential to a successful project. Vendor acknowledges that a significant reason the Department has entered into this Agreement is because of the special qualifications of such Key Personnel. Vendor shall not remove, reassign, transfer, or replace the individual(s) identified in this section except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of the Department's written consent. In the event Vendor requests the Department to consent to a removal, reassignment, transfer or other replacement of any Key Personnel, the Department may review the qualifications of the proposed substitute personnel before providing its written consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better ability, experience and qualifications than the Key Personnel being replaced. Vendor shall not charge the Department, and the Department shall not pay for any proposed replacement personnel while such replacement becomes acclimated to the Project and acquires the necessary skills and project knowledge to proceed with the work under this Agreement. In no event shall this time period exceed twenty (20) business days. Any replacement personnel approved by the Department shall thereafter be deemed Key Personnel for purposes of this Agreement. If at any time during the term of this Agreement, the Department becomes dissatisfied with the performance of any individual who is part of Vendor's personnel, the Department shall notify Vendor of the reasons for such dissatisfaction and may request replacement of such individual. Vendor will promptly investigate such request and the reasons for such dissatisfaction and report back to the Department on the corrective action Vendor believes is appropriate to address the Department's concerns and dissatisfaction. If the parties determine that such individual needs to be replaced, the replacement shall be effected promptly with a

substitute individual having equal or greater ability, experience and qualifications than the departing individual.

6.5 Security Regulation; Cooperation. Vendor and Vendor's personnel shall comply with the Department's and the State's security regulations including any procedure which the Department's personnel, contractors and consultants are normally asked to follow. Vendor agrees to cooperate fully and to provide any assistance necessary to the Department in the investigation of any security breaches that may involve Vendor or Vendor's personnel.

Section 7 - Ownership and Intellectual Property

7.1 Ownership of [Vendor-Owned Deliverables]. Vendor shall retain all right, title, and interest in and to [describe any specific Deliverables that the State agrees Vendor shall retain ownership of, such as COTS that will be subject to the Software License Agreement] that was/were independently developed by Vendor prior to the Effective Date of this Agreement, and all copyright, patent, trademark, trade secret, and all other proprietary rights in and to such [describe Deliverable] ("Vendor-Owned Deliverables").

7.2 License to Vendor-Owned Deliverables. Upon [the Department providing Vendor with written notice of Acceptance of the Vendor-Owned Deliverables, Vendor shall grant to the Department and the State [and to Authorized Users, as defined in the Software License Agreement], a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license to use the [Vendor-Owned Deliverables] and such other rights, licenses and privileges as are more fully described in Software License Agreement.] Vendor agrees that neither Vendor nor any agent, affiliate or subcontractor of Vendor shall charge the Department or State any royalty, license fee, or similar charge for any Vendor-Owned Deliverable to be provided or made available under this Agreement or the Software License Agreement that was created or developed under a separate agreement using funds provided by the Federal Government whether through a cooperative agreement or otherwise.

7.3 Ownership and Assignment of Other Deliverables. Vendor agrees that the State and the Department shall become the sole and exclusive owners of all Deliverables, excluding Vendor-Owned Deliverables and any Third-Party Software. Vendor hereby irrevocably assigns, transfers and conveys to the State and the Department all right, title and interest in and to all Deliverables, excluding Vendor-Owned Deliverables and any Third-Party Software, and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto ("State-Owned Deliverables"). State-Owned Deliverables shall also include any and all modifications, customizations and enhancements that are made to Vendor-Owned Deliverables and to all other Deliverables that are created, produced, delivered or provided in the course of performance under this Agreement. Vendor represents and warrants that the State and the Department shall acquire good and clear title to all State-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Vendor. The Vendor (and Vendor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the State-Owned Deliverables and shall not use any State-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Department and the payment of such royalties or other compensation as the Department deems appropriate. Immediately upon the request of the Department, Vendor will deliver to the Department or destroy, or both, at the

Department's option, all copies of any State-Owned Deliverables in the possession of Vendor.

7.4 Waiver. To the extent any of Vendor's rights in any State-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Vendor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's and the Department's rights in and to the State-Owned Deliverables.

7.5 Acknowledgement. Vendor acknowledges and agrees that the State and the Department, as owners and assignees of the State-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation: (i) obtain, secure, file and apply for any legal protection necessary to secure or protect any rights in and to the State-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto; (ii) adapt, change, modify, edit or use the State-Owned Deliverables as the Department or the State sees fit, including in combination with the works of others, prepare derivative works based on the State-Owned Deliverables, and publish, display, perform and distribute throughout the world any State-Owned Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium; and (iii) make, use, sell, license, sublicense, lease, or distribute the State-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party.

7.6 Further Assurances. At the Department's request, Vendor will execute and deliver such instruments and take such other action as may be requested by the Department to establish, perfect or protect the State's and the Department's rights in and to the State-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 7.3. Vendor shall execute any instruments, provide all facts known to it, and do all other things requested by the Department (both during and after the term of this Agreement) in order to vest more fully in the State and the Department any and all ownership rights and intellectual property rights in and to the State-Owned Deliverables. In the event the Department is unable, after reasonable effort, to secure Vendor's signature on any letters, patent, copyright, or other analogous protection relating to the State-Owned Deliverables, for any reason whatsoever, Vendor hereby irrevocably designates and appoints the Department, and its duly authorized officers, employees and agents, as Vendor's agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Vendor.

7.7 Reservation of Rights by the Federal Government. The Vendor acknowledges and agrees that all or a portion of the funding to pay for the Deliverables to be developed or provided hereunder is being provided through a grant from the Federal Government and that pursuant to 45 CFR 92.34 and any other applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Software and other Deliverables developed under this Agreement and the copyright in and to such Deliverables.

Section 8 - Representations, Warranties and Covenants

8.1 Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement for one year following the date on which the Department provides written notice of Final Acceptance (the "Warranty Period"). During the Warranty Period, Vendor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications promptly upon receiving notice of such Deficiencies or failures from the Department. In the event Vendor is unable to repair, correct or replace such Deliverable to the Department's satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Agreement, and the Department shall be entitled to pursue any other available contractual, legal or equitable remedies. Vendor shall be available at all reasonable times to assist the Department with questions, problems and concerns about the Deliverables, to inform the Department promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable may have been accepted by the Department, and provide the Department with all necessary materials with respect to such repaired or corrected Deliverable.

8.2 Vendor represents and warrants that it is fully aware of the Department's business requirements and intended purposes and uses for the Deliverables as set forth herein and in the RFP, and the Deliverables shall satisfy such requirements in all material respects and are fit for such intended purposes and uses.

8.3 Vendor represents and warrants that: (i) all Deliverables, excluding any Third-Party Software and Third-Party hardware, shall be wholly original with and prepared solely by Vendor; (ii) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the services and Deliverables to the Department hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Department hereunder [and under the Software License Agreement] without violating any rights of any Third Party; (iii) Vendor has not previously and will not grant any rights in any Deliverables to any Third Party that are inconsistent with the rights granted to the Department herein [and in the Software License Agreement]; and (iv) the Department shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

8.4 Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (ii) the Department's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform the Department in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Vendor shall, at the Department's request and at the Vendor's sole expense: (i) procure for the Department the right or license to continue to use the Deliverable at issue; (ii) replace such

Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to the Department all fees, charges and any other amounts paid by the Department under this Agreement [and the Software License Agreement] with respect to such Deliverable. In addition, Vendor agrees to indemnify, defend, protect and hold harmless the Department and the State and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement, including for any breach of the representations and warranties made by Vendor in this Section 8.4. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Department and shall survive termination of this Agreement.

8.5 All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

8.6 Vendor represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Department notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to the Department, such that the services are rendered in the above-specified manner, or if the Vendor is unable to perform the services as warranted, Vendor shall reimburse the Department any fees or compensation paid to Vendor for the unsatisfactory services.

8.7 Vendor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement [and the Software License Agreement].

8.8 Vendor represents, warrants and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

8.9 Vendor represents and warrants that the Deliverables will comply with any applicable federal, state foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Agreement, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

8.10 Vendor covenants that it will comply with and adhere to all Department and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and that Vendor will take all precautions necessary

to prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information.

8.11 Vendor is not in arrears with respect to the payment of any monies due and owing the State or any department, agency or other Governmental Entity thereof, including but not limited to the payment of taxes and employee benefits, and it will not become so during the Term of this Agreement, or any extensions thereof.

8.12 Vendor represents, warrants and covenants that for the duration of the Agreement and the Warranty Period, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains and will enable the Department to use, modify and maintain such Deliverable(s) and the System fully and completely.

8.13 Vendor's warranties provided in this Section 8 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Department.

Section 9 - Indemnification

9.1 Vendor and its successors and permitted assigns shall defend, protect, indemnify and hold harmless the Department, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:

9.1.1 Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete; or

9.1.2 Any act or omissions of Vendor, including, without limitation, any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors; or

9.1.3 Vendor's performance or attempted performance of this Agreement; or

9.1.4 Failure by Vendor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, federal and international laws, rules, ordinances and regulations; or

9.1.5 Any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State; or

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

9.2 Vendor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the

performance of this Agreement regardless of the date any potential claim is made or discovered by the Department or any other Indemnitee.

9.3 The Department will reasonably cooperate with Vendor to facilitate the defense of any action defended by Vendor. The Department reserves the right to participate in the defense of any such action.

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

Section 10 - Default and Termination

10.1 Termination for Cause by the Department. The Department may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in the Department's notice of breach or any subsequent notice or correspondence delivered by the Department to Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for liquidated damages. In addition, the Department may terminate this Agreement effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

10.1.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, [the Software License Agreement,] the RFP or the Proposal that is false, deceptive, or misleading;

10.1.2 Vendor or any of Vendor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

10.1.3 Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;

10.1.4 Vendor terminates or suspends its business;

10.1.5 Vendor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited;

10.1.6 Vendor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;

10.1.7 The Department determines or believes the Vendor has engaged in conduct that has or may expose the Department or the State to material liability;

10.1.8 Vendor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret; or

10.1.9 Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

10.1.9.1 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;

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

10.1.9.3 Making an assignment for the benefit of creditors;

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

10.1.9.5 Taking any action to authorize any of the foregoing.

The Department's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Department, and the Department shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

10.2 Termination for Convenience. Following thirty (30) days written notice, the Department may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor. Termination for convenience can be for any reason or no reason at all.

10.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

10.3.1 The legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or

10.3.2 If funds (including federal funds or grant funds) are de-appropriated, reduced, not allocated, unavailable, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder [or under the Software License Agreement] are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or

10.3.3 If the Department'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

10.3.4 If the Department's duties, programs or responsibilities are modified or materially altered; or

10.3.5 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 Department's ability to fulfill any of its obligations under this Agreement or the operation of the System.

The Department shall provide Vendor with written notice of termination pursuant to this section.

10.4 Limitation of the State's Payment Obligations. In the event of termination of this Agreement for any reason by either party (except for termination by the Department pursuant to Section 10.1), the Department shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the Department up to and including the date of termination of this Agreement and for which the Department is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to the Department and shall not be construed to require the Department to pay any compensation or other amounts hereunder [or under the Software License Agreement] in the event of Vendor's breach of this Agreement [or the Software License Agreement] or any amounts withheld by the Department in accordance with the terms of this Agreement. The Department shall not be liable, under any circumstances, for any of the following:

10.4.1 The payment of unemployment compensation to Vendor's employees;

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

10.4.3 Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement [and/or the Software License Agreement];

10.4.4 Any damages or other amounts for or relating to the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement [or the Software License Agreement];

10.4.5 Any taxes Vendor may owe in connection with the performance of this Agreement [or the Software License Agreement], including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

10.5 Vendor's Termination Duties. Upon receipt of notice of termination or upon request of the Department, Vendor shall:

10.5.1 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 Department may require.

10.5.2 Immediately cease using and return to the Department any property (including, without limitation, Department Property) or materials, whether tangible or intangible, provided by the Department to Vendor.

10.5.3 Cooperate in good faith with the Department and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.

10.5.4 Immediately return to the Department any payments made by the Department for services or Deliverables that were not rendered or provided by Vendor.

10.5.5 Immediately deliver to the Department any and all Deliverables (including State-Owned Deliverables, Source Code, object code, Software, and Documentation) for which the Department has made payment (in whole or in part) that is in the possession of under the control of the Vendor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

10.6 Termination for Cause by Vendor. Vendor may only terminate this Agreement upon written notice for the breach by the Department of any material term, condition or provision of this Agreement, if such breach is not cured within sixty (60) days of the Department's receipt of Vendor's written notice of breach.

Section 11. Insurance.

11.1 Insurance Policies. Vendor shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa and acceptable to the Department, insurance covering its work of the type and in amounts required by this Agreement. Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor's performance of this Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Agreement shall: (i) be subject to the approval of the Department; (ii) remain in full force and effect for the entire term of this Agreement; and (iii) not be canceled, reduced or changed without the Department's prior written consent. The State of Iowa and the Department shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: "It is hereby agreed and understood that the State of Iowa and the Department are named as additional insured, and that the coverage afforded to the State of Iowa and the Department under this policy shall be primary insurance. If the State of Iowa or the Department have other insurance which is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance." Unless otherwise requested by the Department, Vendor shall cause to be issued insurance policies with the coverages set forth below:

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

11.2 Claims Provision. All insurance policies required by this Agreement must provide coverage on an "occurrence basis" for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

11.3 Certificates of Coverage. At the time of execution of this Agreement, Vendor shall deliver to the Department certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to this Agreement, certifying that the State of Iowa and the Department are named as additional insureds on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Department. All certificates of insurance shall be subject to approval by the Department.

The Vendor shall simultaneously with the delivery of the certificates deliver to the Department one duplicate original of each insurance policy.

11.4 Liability of Vendor. Acceptance of the insurance certificates by the Department shall not act to relieve Vendor of any obligation under this Agreement. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Vendor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Vendor shall have no claim or other recourse against the State or the Department for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Vendor. Notwithstanding any other provision of this Agreement, Vendor shall be fully responsible and liable for meeting and fulfilling all of its obligations under Section 11 of this Agreement.

11.4.1 Limitations of Vendor Liability. If the Iowa Department of Administrative Services conducted the Procurement (the solicitation for competitive proposals) from which the award for this contract gave rise, then Iowa Administrative Code 11-108 will apply. In which case, according to AC 11-108 (unless otherwise provided for in the Procurement documents) the Maximum Liability of the Vendor (contractor) is one times the Contract Value (Contract Value is defined as the aggregate total compensation pertaining to the project paid by the state to the vendor under the entire term of the contract, including all renewals and extensions).

11.4.2 Prohibited Limitations of Vendor Liability. Under no circumstances shall the foregoing limitation in 11.4.1 apply to:

- a. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence,
- b. Claims related to death, bodily injury, or damage to real or personal property,
- c. Any contractual obligations of the vendor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, or confidential information,
- d. Claims arising under provisions of the contract calling for indemnification of the state for third-party claims against the state for bodily injury to persons or for damage to real or tangible personal property caused by the vendor's negligence or willful conduct.

11.5 Waiver of Subrogation Rights. Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Department or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Department.

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

11.7 Proceeds. In the event the Department or the State suffers a loss that may be covered under any of the insurance policies required under this Section 11, neither the

Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Department and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the Department and the State all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Agreement.

Section 12 - Contract Administration

12.1 Independent Contractor. Vendor is an independent contractor performing services for the Department. Vendor shall not hold itself out as an employee or agent of the Department. The Department shall not provide Vendor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and its staff shall not be considered employees of the Department or the State for any purpose, including for federal or State tax purposes. The Department shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

12.2 Compliance with the Law and Regulations.

12.2.1 Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to Vendor's performance of this Agreement.

12.2.2 Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to the fulfillment or performance of this Agreement.

12.2.3 The Department may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

12.3 Confidentiality, IT Standards and Security

12.3.1 Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by the Department or the State ("Department Property") to the extent necessary to carry out its responsibilities under the Agreement. Such Department

Property shall at all times remain the property of the Department and/or the State. Vendor shall preserve the confidentiality of Department Property disclosed or furnished by the Department to Vendor and shall maintain procedures for safeguarding such property. Vendor must designate one individual who shall remain the responsible authority in charge of all Department Property collected, used, or disseminated by Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors may be required by the Department to execute confidentiality or non-disclosure agreements to obtain access to certain Department Property. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any Department Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by the Department to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Vendor agrees to return any and all Department Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of the Department. In the event that Vendor receives a request for access to any Department Property, Vendor shall immediately communicate such request to the Department for consideration and handling.

12.3.2 Vendor shall indemnify the Department, the State and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, the Department may terminate this Agreement immediately without notice of default and opportunity to cure. Vendor acknowledges that the disclosure of any Confidential Information of the Department or the State will immediately give rise to continuing irreparable injury to the Department and others that is inadequately compensable in damages at law. Accordingly, and without prejudice to any other remedy available to the Department, the Department will be entitled to injunctive relief. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

12.3.3 No confidential Information will be exported to any country in violation of the United States Export Administration Act and regulations thereunder.

12.3.4 Vendor will comply with and adhere to all Department and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and provide training to Vendor's employees and subcontractors concerning such standards, procedures and protocols. Current standards are accessible online at <http://das.ite.iowa.gov/standards/>. Vendor will take all precautions and actions necessary to: (i) prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information; and (ii) ensure that all of the Department's and the State's documentation, electronic files, data, and systems are developed, used, and maintained in a secure manner, protecting their confidentiality, integrity and availability. Vendor agrees that it will not copy, reproduce, transmit, or remove any Department (or State) information or data without the prior written consent of the Department. Vendor agrees that it shall be liable for any damages, losses, and expenses suffered or incurred by the Department or the State as a result of: (a) any breach of this section, or (b) any breaches of security (including those described below) that are caused by any action or omission of Vendor or Vendor's employees, agents and subcontractors. Breaches of security include, but are not limited to:

- a. Disclosure of confidential or sensitive information;

- b. Unauthorized access to Department or State systems;
- c. Illegal technology transfer;
- d. Sabotage or destruction of Department or State information or information systems;
- e. Compromise or denial of Department or State information or information systems;
- f. Damage to or loss of Department or State information or information systems; and
- g. Theft.

The Vendor shall immediately report to the Department any such breach of security. In the event of a breach of this section or any breach of security as described herein, the Department may terminate this Agreement immediately without penalty or liability to the Department and the State and without affording Vendor any opportunity to cure.

12.4 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

12.5 Third Party Rights. No person other than the parties hereto, their respective successors and permitted assigns, the State and Governmental Entities may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Department, the State, Governmental Entities and the Vendor.

12.6 Choice of Law and Forum

12.6.1 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.

12.6.2 Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise.

12.6.3 This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Department or the State, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise.

12.6.4 Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints [name] at [address] Des Moines, Iowa, as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the

Department. Nothing in this provision will alter the right of the Department to serve process in any other manner permitted by law.

12.6.5 This Section 12.6 shall survive termination of this Agreement.

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

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

12.9 Integration. This Agreement [and the Software License Agreement] represents the entire Agreement between the parties concerning the subject matter hereof, and neither party is relying on any representation that may have been made which is not included in this Agreement [or the Software License Agreement.] The Department shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, or "sneakwrap" agreement (or any other similar agreement) that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Department on the basis of draftsmanship or preparation thereof.

12.10 Obligation beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4.1, 5.1 - 5.4, 5.6 – 5.9, 7.1-7.7, 8.1 - 8.13, 9.1 - 9.4, 10.4 - 10.6, 11.1-11.6, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.16, 12.18, 12.19, 12.24, 12.25, 12.28, 12.30, 12.32, 12.33, and 12.37 – 12.40 shall survive termination of this Agreement and/or termination of Support. [To be reviewed and revised by the parties prior to execution]

12.11 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Department and Vendor for the goods and services provided in connection with this Agreement, [except for the Software License Agreement.]

12.12 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

12.13 Notices.

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

If to the Department:	
If to Vendor:	

12.13.2 Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

12.13.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

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

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

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

12.17 Authorization. Vendor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

12.18 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

12.19 Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section.

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

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

12.22 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

12.23 Additional Provisions. The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

12.24 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

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

12.26 Force Majeure.

12.26.1 Neither Vendor nor the Department shall be liable to the other for any delay or failure of performance of this Agreement, and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure" and not as a result of the fault or negligence of a party.

12.26.2 As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other similar catastrophic events which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force Majeure" does not include financial difficulties of Vendor or any parent, subsidiary, affiliated or associated company of Vendor or claims or court orders that restrict Vendor's ability to deliver the goods or services contemplated by this Agreement.

12.26.3 If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the Department.

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

12.28 Right of Inspection. Vendor shall allow the Department, or anyone designated by the Department, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

12.29 Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Department and the State are exempt from the payment of State sales and other taxes.

12.30 Title to Property. Title to all property (including Department Property) furnished by the Department and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of the Department and/or the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Department upon the earliest of completion, termination, or cancellation of this Agreement or at the Department's request. Vendor

acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Department under this Agreement, shall pass to and vest in the Department and/or State, except as otherwise provided in this Agreement.

12.31 Exclusivity. This Agreement is not exclusive. During the term of this Agreement, the Department may obtain similar services from other service providers.

12.32 Award of Related Agreements. the Department may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Department or the State in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by the Department will abide by this provision.

12.33 Sovereign Immunity. The Department and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

12.34 Hardware and Equipment. In the event that any hardware and other equipment owned by Vendor and used in connection with this Agreement are subject to the security interest or a legal or equitable interest by a Third Party, Vendor shall insure in any such transactions that the Department shall be notified of a default occurring under the instrument and if Vendor does not cure the default within the time allowed, the Department may, in its sole discretion, cure the default by Vendor and assess or set off all costs associated with affecting cure, including but not limited to, the amount in default and reasonable attorneys fees against Vendor.

12.35 Disclaimer. All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Department at the time the above-cited documents were prepared. The Department does not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

12.36. Procurement by other Governmental Entities. Vendor acknowledges and agrees that other State agencies, departments, boards, commissions, establishments, units and other governmental entities (as defined in Iowa Code Section 8A.101) may procure services and Deliverables from Vendor under this Agreement.

12.37. Assignment of Third Party Warranties. Vendor hereby assigns and shall assign to the Department any and all existing and future warranties, indemnities and other benefits obtained or available from the licensor of any Third Party Software or the manufacturer of any equipment or replacement parts provided or otherwise furnished in connection with this Agreement.

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

12.39 Contract Compliance Audit. Vendor agrees that the Department or a representative of its selection may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or expiration of this Agreement to determine whether or not the Vendor is complying with the terms of this Agreement, criteria established for access to Department Property, State and federal laws regarding Confidential Information, and any other applicable laws and regulations. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by the Department or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

12.40 Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and Department Property furnished by the Department for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the Department request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Department. In addition, at the Department's request, Vendor will reimburse the Department for any loss or damage to such property caused by Vendor, or any agent, contractor or subcontractor employed or utilized by Vendor. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of the Department and the State. Vendor shall obtain the prior advance written approval from the Department prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks or intellectual property rights of the Department or the State.

12.41 Notification of Events. Vendor shall notify the Department in writing if any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

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

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

12.41.3 Making an assignment for the benefit of creditors; or

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

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

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

12.41.7 Taking any action to authorize any of the foregoing.

12.42 Vendor's Certification regarding Suspension and Debarment. Vendor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency. Vendor further agrees to comply with the regulations implementing executive order 12549 regarding debarment and suspension.

12.43 Vendor's Certification regarding Lobbying. Vendor certifies that:

12.43.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the Vendor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

12.43.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the Vendor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

12.43.3 Vendor shall require that the language of this section be included in the award documents for all subawards at all levels (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

12.43.4 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code of Federal Regulations. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

12.44 Vendor's Certification regarding Brokering. Vendor certifies that no person or selling agency has been employed or retained to solicit and secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingency excepting bona fide employees or selling agents maintained by the Vendor for the purpose of securing business. For breach or violation of this certification, the Department shall have the right to terminate this contract without liability, or in its discretion, to deduct from the contract price or to otherwise recover the full amount of such commission, percentage, brokerage, or contingency.

12.45 Vendor's Certification regarding a Drug Free Workplace. Vendor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations. Vendor is required to report any conviction of employees under a criminal drug statute for violations occurring on the Vendor's premises or off the Vendor's premises while conducting official business. A report of a conviction shall be made to the Department within five (5) working days after the conviction.

12.46 Vendor's Certification regarding Environmental Tobacco Smoke.

12.46.1 Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal

programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

12.46.2 Vendor certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

12.46.3 Vendor agrees that it will require that the language of this certification be included in any subcontract or subaward that contains provisions for children's services and that all subrecipients shall certify accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1,000 per day.

12.47 Tobacco Free Environment. Vendor agrees that it will not allow smoking or tobacco use within any portion of any indoor facility it leases, rents, or owns, and over which it has the authority to establish policy. This section does not apply to portions of facilities used for inpatient/residential drug, alcohol, or gambling treatment, or mental health services. Applicable federal law supersedes this section.

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

State of Iowa, acting by and through
the _____ [Department]

[Vendor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A
STATEMENT OF WORK AND PRICES

SCHEDULE B
PROJECT PLAN

SCHEDULE C
PERFORMANCE STANDARDS

RFP Attachment # 6
PROPOSED LICENSE AGREEMENT
(See also RFP Section # 6)

This Software License Agreement (the "Agreement") is effective as of [] ("Effective Date"), and is made by and between _____, a [corporation] organized under the laws of _____, ("Licensor") and the State of Iowa ("State"), acting by and through the Iowa Department of [] ("Department") (the State and the Department shall be referred to individually and collectively as "Licensee").

SECTION 1 DEFINITIONS

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings. All other capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Services Contract.

'Authorized Contractors' mean independent contractors, consultants or other Third Parties who are retained or hired by Licensee or a Governmental Entity to maintain, modify, support or enhance the Software or to otherwise assist Licensee or other governmental entities with their use of the Software.

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

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

"Documentation" means any and all technical information, commentary, explanations, design and system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Software, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

"Enhancements" means all updates, upgrades, patches, additions, modifications or other enhancements to the Software provided or made by Licensor or any Third Party,

any new releases of Software, and all changes to the Documentation and Source Code as a result of such Enhancements.

“Governmental Entity” or **“Governmental Entities”** mean any governmental entity as defined in Iowa Code Section 8A.101(4) (Supp 2003) or any successor provision to that section. Governmental Entities shall also be deemed to include agencies, independent agencies, departments, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, offices of elective constitutional or statutory officers, and other units or entities of government.

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

“Services Contract” means the Services Agreement by and between the Dept and Licensor dated _____.

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

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

“Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Software stated or expressed in this Agreement, the Services Contract, Documentation, the Licensee’s Request for Proposal No. ____ for [use title of RFP] (“RFP”), and the Licensor’s proposal dated _____, in response to the RFP (“Proposal”). Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

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

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

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

“Warranty Period” shall have the meaning ascribed to it in the Services Contract.

SECTION 2 SOFTWARE LICENSE

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

- 2.1.1 Use, install, host, access, execute, copy, modify, edit, format, translate, maintain, support, repair, enhance, test, demonstrate, display, and prepare derivative works based on, the Software, in all media now known or hereafter created;
- 2.1.2 Combine and use the Software with other software, firmware, Public Code and hardware;
- 2.1.3 Grant any or all of the rights set forth/granted in Subsections 2.1.1 and 2.1.2 above to Authorized Contractors;
- 2.1.4 [Grant rights to access and use the Software and its functions to Users; and]

All Software subject to this Agreement may be used on any one or more of the Licensee's or any Governmental Entity's computers, data center locations, networks, Internet or intranet sites, servers or other systems ("Licensee Systems"). For purposes of this Agreement, the parties agree that if the Licensee or any Governmental Entity User makes any modifications or enhancements to the Software, the Licensee or Governmental Entity who makes such modification or enhancement owns such modifications or enhancements. The foregoing license grants and rights include a license under any current or future patents owned or licensable by Licensor to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Software or any other Deliverables provided under the Services Contract, including without limitation the [name System or specific software/modules, etc.], with any hardware and software.

2.2 Delivery of Source Code. Licensor shall furnish and deliver to Licensee a complete copy of all Source Code (on a media and in an electronic format acceptable to Licensee) and updated Documentation (including any written information necessary or desirable for the maintenance, modification, compilation, and/or enhancement of the Software) for the most current version of all Software provided to Licensee hereunder: (i) upon Licensee's Acceptance of the Software [or, within x days of execution of this Agreement], (ii) when Licensor delivers or furnishes any Enhancement to Licensee under this Agreement or any maintenance or support agreement related to the Software, and (iii) upon Licensee's written request.

2.3 Licensee Not Required to Accept or Install Enhancements. Licensor shall not condition any of the Licensee's rights and remedies, or the Licensor's obligations, under this Agreement or any other agreement related to the Software, on the Licensee accepting or installing any Enhancements or additional functionality provided by Licensor.

SECTION 3 TERM

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

SECTION 4 DELIVERY AND INSTALLATION.

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

SECTION 5 COMPENSATION

5.1 License Fee. In consideration of the grant of the perpetual license and all other rights granted to Licensee and Governmental Entities under this Agreement, Licensor

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

5.2 Invoice and Payment. Licensors shall submit to the Department an invoice requesting payment of the fee specified above and supporting documentation in accordance with the terms and conditions of Section 5.2 of the Services Contract. The Department shall pay all approved invoices in accordance with and subject to the terms and conditions of the Services Contract, including Sections 5.1- 5.4, 5.6, 5.7 and 10.4 thereof. Notwithstanding anything herein to the contrary, the Department shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Department believes the invoice is inaccurate or incorrect in any way.

5.3 Set Off. In the event that Licensors owe the Department or the State any sum under the terms of this Agreement, the Services Contract, any other agreement, pursuant to a judgment, or pursuant to any law, the Department may set off such sum against any sum invoiced to the Department in the Department's sole discretion unless otherwise required by law. Amounts due to the Department or State as liquidated damages or any other damages awarded by a court, an Administrative law judge or any other similar entity may be deducted by the Department without a judgment or any court action from any money or sum payable by the Department to Licensors pursuant to this Agreement or any other agreement between Licensors and the Department or the State.

5.4 Withholding. In addition to pursuing any other remedy provided herein or by law, the Department may withhold compensation or payments to Licensors, in whole or in part, without penalty to Licensee or work stoppage by Licensors, in the event: (i) Licensors fail to provide Software or correct any Deficiencies with respect to any Software to Licensee's satisfaction; (ii) Licensors fail to perform any of its other obligations as set forth in this Agreement and/or the Services Contract; or (iii) the Software or any portion thereof fails to meet or conform to any applicable Specifications. No interest shall accrue or be paid to Licensors on any compensation or other amounts withheld or retained pursuant to the Section 5.4.

SECTION 6 REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Licensors represents and warrants that during the Warranty Period, the Software (in whole and in part) shall: (i) be free from material Deficiencies; (ii) conform to and operate in accordance with all Specifications; and (iii) be compatible with and interoperate fully and correctly with the Licensee Systems specified in Schedule B. Licensors warrants that all media containing or relating to the Software furnished hereunder shall be free from defects in material and workmanship. During the Warranty Period, Licensors shall, at Licensee's request and at Licensors's expense, repair, correct or replace any Software that fails to comply with the warranties and requirements of this Section 6.1 promptly upon receiving notice of such failure from Licensee, but in no event more than [three (3)] days after the date of receipt of such notice. In the event Licensors is unable to repair, correct or replace such Software to Licensee's satisfaction, Licensors shall refund the fees or other amounts paid for such Software within ten (10) business days after Licensee's request for such refund. The foregoing shall not constitute an exclusive remedy under this Agreement, and Licensee shall be entitled to pursue any other available contractual, legal or equitable remedies.

6.2 Licensors represents and warrants that Licensors is fully aware of Licensee's business requirements and intended uses for the Software as set forth in the RFP, and

the Software shall satisfy such requirements in all material respects and is fit for such intended uses.

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

6.4 Licensors represents and warrants that: (i) the Software (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, the software); (ii) Licensee's (and any Governmental Entity's) use of the Software in accordance with the terms of this Agreement; and (iii) Licensee's (and any Governmental Entity's) exercise of the rights, licenses and benefits granted or conveyed hereunder, do not and will not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Licensors further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. Licensors shall immediately inform Licensee in writing upon becoming aware of any actual, potential or threatened claim of infringement or violation of any intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. If such a claim arises or is likely to arise, then Licensors shall, at the Licensee's request: (i) procure for the Licensee and Governmental Entities the right or license to continue to use the Software at issue; (ii) replace such Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation; or (iii) modify or replace the affected portion of the Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation. In the event Licensors is unable to fulfill its obligation under (i), (ii) or (iii) above as requested, Licensors shall accept the return of the Software and refund to the Licensee all fees, charges and any other amounts paid by the Licensee with respect to such Software. In addition, Licensors agrees to fully indemnify, defend, protect and hold harmless the Licensee, Governmental Entities and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement with respect to any such claims. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Licensee and shall survive termination of this Agreement.

6.5 The Licensors represents and warrants that all Software provided under this Agreement which uses date data shall accurately process data, including but not limited to, calculating, comparing and sequencing from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, integral calculations, day-in-year calculations, day-of-week calculations and week-of-year calculations; and not experience abnormal ending and/or produce invalid or incorrect results in the operation of the Software or Licensee's System. If the Software is to perform as a system with other hardware and/or software, then this warranty shall apply to the Software as it processes, transfers, sequences data, or otherwise interacts with other software, hardware, components or other parts of the system, provided that such other software, hardware, components or parts do not fail to meet any applicable requirements of this Section 6.5. The remedies available to the Licensee for breach of this warranty include, but are not

limited to, repair or replacement of non-compliant Software. Nothing in this warranty shall be construed to limit any rights or remedies of the Licensee under this Agreement with respect to Deficiencies in the Software other than data processing compliance.

6.6 The Licensor represents and warrants that all Software and Enhancements do not and shall not as delivered or provided by Licensor contain an anti-use device, a disabling device, lockup program, a so-called “time bomb” or “drop dead” device, “back door,” instructions, contaminants, viruses, Trojan Horses, worms, cancelbots, or any other mechanism, code or computer programming routine that will disable, damage, impair or impede, lock-up, alter, halt, abnormally end, surreptitiously intercept, expropriate or interfere with the Software, Licensee Systems or any data or information of Licensee. Licensor further represents and warrants that all Software and Enhancements do not contain any other programming or device of any kind that would allow unauthorized access to the Software by Licensor or any other person or any Third Party. Licensor covenants that it will not under any circumstance, including enforcement of a valid contract right, (i) install or trigger a lockup program or disabling device, or (ii) take any step that would in any manner interfere with Licensee’s use of the Software or Licensee Systems, or restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee’s business. For any breach of this provision, Licensor shall, immediately after receipt of notification of the breach, cure the breach to Licensee’s satisfaction, including, without limitation, repairing, at Licensor’s expense, any damage done to the Software or Licensee Systems or any other property.

6.7 Licensor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, local and international laws, rules, regulations, codes, orders and ordinances in connection with its performance of this Agreement.

6.8 Licensor represents and warrants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

6.9 Licensor represents and warrants that the Software and the license, use and other rights granted hereunder comply with, and shall comply with, all applicable federal, state, local and international laws, rules, regulations, codes, orders and ordinances in effect as of the date of this Agreement, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

6.10 Licensor has not incorporated and will not incorporate, without the prior written consent of Licensee, any Public Code, in whole or in part, into any part of the Software or any Enhancement, or use Public Code, in whole or in part, in the development of any part of the Software or any Enhancement in a manner that may subject the Software or any Enhancement, in whole or in part, to all or part of the license obligations of any Public Code.

6.11 Licensor represents and warrants that all Documentation will accurately reflect the operation of the Software or other Deliverables to which the Documentation pertains and will enable the Licensee to use, modify and maintain the Software fully and completely.

6.12 Licensor’s warranties provided in this Section 6 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Licensee.

6.13 Notwithstanding anything to the contrary in this Section 6, in no event shall Licensor be liable for any unauthorized modifications or enhancements made by Licensee

or a Governmental Entity to the Software. Licensee acknowledges that no warranty is provided with respect to any such modifications or enhancements.

SECTION 7 TERMINATIONS

7.1 Termination by Licensor for Cause. Licensor may only terminate this Agreement and revoke the license and other rights granted under this Agreement if Licensee has breached this Agreement by failing to pay in full the license fee specified in Section 5.1 in accordance with the terms of this Agreement and the Services Contract, or if Licensee commits a material breach of Section 9.2.2 of this Agreement, provided in either event that Licensor first gives Licensee written notice of the alleged breach and a 60-day period in which to cure the breach. Licensor may not terminate this Agreement and revoke the license and other rights granted hereunder if Licensee's failure to pay any portion or all of the license fee or other amounts arises from or relates to Licensee's withholding or retention of such amounts in accordance with this Agreement or the Services Contract. Upon termination of this Agreement by Licensor in accordance with this Section 7.1, Licensee will return the Software to Licensor or will certify in writing to Licensor that it has destroyed all copies of the Software. Except as expressly provided in this Section 7.1, Licensor shall not be entitled to terminate this Agreement or revoke the license and other rights granted herein.

7.2 Limitation of the Licensee's Payment Obligations. In no event shall Licensee be required to pay any amounts other than those expressly stated in Section 5.1 of this Agreement. The Licensee (and Governmental Entities) shall not be liable, under any circumstances and regardless of termination of this Agreement, for any of the following:

- 7.2.1 The payment of unemployment compensation to Licensor's employees;
- 7.2.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
- 7.2.3 Any costs incurred by Licensor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Services Contract;
- 7.2.4 Any damages or other amounts for or related to the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement, the Services Contract or any agreement with Third Parties;
- 7.2.5 Any taxes Licensor may owe in connection with the performance of this Agreement or the Services Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

SECTION 8 INDEMNIFICATION

8.1 Licensor and its successors and permitted assigns shall defend, indemnify and hold the Licensee and Governmental Entities and their employees, officers, directors, agents, and officials (individually and collectively "Indemnitees") harmless from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) directly related to, resulting from or arising out of this Agreement, including, but not limited to, any claims related to, resulting from, or arising out of:

- 8.1.1 Any violation or breach of any term or condition of this Agreement by Licensor; or
- 8.1.2 Any acts or omissions of the Licensor related to the performance of this Agreement, including any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Licensor, its officers, employees, agents, directors, contractors or subcontractors; or

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

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

8.2 Licensor's duties as set forth in this Section 8 shall survive the termination of this Agreement and shall apply to all acts taken in the performance of this Agreement regardless of the date any potential claim is made or discovered by Licensee or any other Indemnitee.

8.3 Licensee shall reasonably cooperate with Licensor to facilitate the defense of any action defended by Licensor. Licensee reserves the right to participate in the defense of any action or claim for which indemnification is provided hereunder.

SECTION 9 CONTRACT ADMINISTRATION

9.1 Independent Contractor. The status of the Licensor shall be that of an independent contractor. Licensee shall not provide the Licensor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither the Licensor nor its employees shall be considered employees of the State of Iowa. Neither the Licensor nor its employees are eligible for any State employee benefits, including but not limited to, retirement benefits, insurance coverage or the like. Neither the Licensor nor its employees shall be considered employees of the Licensee or the State of Iowa for federal or state tax purposes. Licensee shall not withhold taxes on behalf of the Licensor (unless required by law). The Licensor shall be responsible for payment of all taxes in connection with any income earned in connection with this Agreement.

9.2 Confidentiality.

9.2.1 Licensor and its employees, agents, contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed (exclusive of Licensor's Software and Documentation), owned or maintained by Licensee ("Licensee Property") to the extent necessary to perform its obligations under this Agreement and the Services Contract. Such Licensee Property shall at all times remain the property of Licensee. Licensor shall preserve the confidentiality of Licensee Property and shall maintain procedures for safeguarding such property. Licensor shall designate one individual who shall remain the responsible authority in charge of all Licensee Property received, collected, accessed, disseminated or otherwise used by Licensor in connection with the performance of this Agreement and the Services Contract. Licensor shall accept responsibility for providing adequate supervision and training to its employees, agents, contractors and subcontractors to ensure compliance with the terms of this Agreement. Licensor and its employees, agents, and contractors or subcontractors may be required by the Licensee to execute confidentiality or non-disclosure agreements to obtain access to certain Licensee Property. Licensor and its employees, agents, contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any Licensee Property received, collected, maintained, or used in the course of performance of the Agreement or the Services Contract except as permitted by the Licensee to enable Licensor to perform its obligations under this Agreement and the Services Contract and except as authorized by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Licensor agrees to return any and all Licensee Property and all copies thereof received, collected, accessed, maintained, created, or used in the course or

performance of the Agreement in whatever form it is maintained promptly at the request of Licensee. In the event that Licensor receives a request for access to any Licensee Property, Licensor shall immediately communicate such request to Licensee for consideration and handling. Licensor shall indemnify Licensee in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this Section, the Licensee may terminate this Agreement immediately without notice of default and opportunity to cure. Licensor acknowledges that the disclosure of any Confidential Information of the Licensee will immediately give rise to continuing irreparable injury to the Licensee or others that is inadequately compensable in damages at law. Accordingly, and without prejudice to any other remedy available to the Licensee, the Licensee will be entitled to injunctive relief. Licensor's obligations and Licensee's remedies under this Section 9.2.1 shall survive termination of this Agreement.

9.2.2 Except as provided or contemplated herein, and subject to applicable federal, state or international laws, rules or regulations (including Iowa Code Chapter 22 and [insert citation for the Department's Fair Info. Practices rules) the Licensee shall not disclose to Third Parties (excluding Governmental Entities and Authorized Contractors) any information of Licensor that is marked or otherwise clearly identified by Licensor as Confidential Information without the prior written consent of Licensor. Licensor shall limit such identification to information it reasonably believes is entitled to confidential protection pursuant to such applicable laws, rules and regulations. Notwithstanding the foregoing, the Licensee may disclose Licensor's Confidential Information pursuant to: (i) any legal, judicial, or administrative proceedings, subpoena, summons, order, ruling or other legal or administrative processes; and/or (ii) applicable laws, rules, or regulations. In such event, the Licensee shall provide prompt notice to Licensor of the circumstances giving rise to the Licensee's disclosure. Licensor acknowledges that the Licensee is subject to Iowa Code Chapter 22 and other laws, rules and regulations governing public records. If a request is made to view or otherwise access Licensor's Confidential Information pursuant to such laws, rules or regulations, the Licensee will promptly notify Licensor of the request. Subject to the foregoing, the Licensee will use reasonable efforts to protect Licensor's Confidential Information provided such information can reasonably be determined to constitute a confidential record under Iowa Code Section 22.7 or other applicable laws, rules or regulations. In the event the Licensee reasonably determines that such information is not a confidential record, the Licensee may release such information unless Licensor files an action in Polk County District Court to prevent the release of the requested information within ten (10) days of receiving notice from the Licensee. [For purposes of this Section 9.2.2, the source code for the Software shall be considered Confidential Information of Licensor.]

9.3 Compliance with Laws. Licensor and its employees, agents, officers, directors, contractors and subcontractors shall comply with all applicable federal, state, international and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including, without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws and laws relating to the use of targeted small businesses as subcontractors or suppliers. Licensor shall comply with any applicable reporting and compliance standards of the Department of Management regarding equal employment. Licensor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 Iowa Admin. Code 4. Licensor represents and warrants that it has complied with all federal, state, foreign and local laws,

codes, rules, ordinances, orders and regulations applicable to the performance of its obligations under this Agreement.

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

9.5 Third-Party Rights. No person other than the parties hereto, their respective successors and permitted assigns, and Governmental Entities may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Licensee, Governmental Entities and the Licensors.

9.6 Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Licensors hereby irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Licensee, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Licensors irrevocably consents to service of process by certified or registered mail addressed to the Licensors' designated agent. The Licensors appoints [name] at [address] Des Moines, Iowa, as its agent to receive service of process. If for any reason the Licensors' agent for service is unable to act as such or the address of the agent changes, Licensors shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Licensee. Nothing in this provision will alter the right of the Licensee to serve process in any other manner permitted by law. This Section 9.6 shall survive termination of this Agreement.

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

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

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

9.10 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

9.11 Obligations beyond Agreement Term. This Agreement shall remain in full force and effect perpetually unless terminated pursuant to Section 7 of this Agreement. Licensors obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 2.1-2.3, 5.2-5.4, 6-8, 9.4, 9.2, 9.3, 9.5, 9.6, 9.8, 9.11-9.16, 9.18, 9.19, 9.22, 9.24-9.26, and 9.29-9.30 shall survive termination of this Agreement. [To be reviewed by both parties prior to execution.]

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

subcontractor, which, if done by Licensor, would constitute a breach of this Agreement, shall be deemed a breach by Licensor and have the same legal effect.

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

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

If to Licensee: _____

If to Licensor: _____

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

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

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

9.17 Authorization. Licensor represents and warrants to Licensee that:

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

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

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

9.19 Record Retention and Access. The Licensor shall maintain books, records, and documents which sufficiently and properly document all services and deliverables provided under this Agreement and calculate all charges billed to the Licensee throughout the term of this Agreement for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or completion of any required audit. The Licensor shall permit the Licensee, the Auditor of the State of Iowa or

any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Licensor relating to orders, invoices, or payments or any other documentation or materials pertaining to this Agreement. The Licensor shall not impose or seek payment for any charge, fee or expense associated with any audit or examination of the Licensor's books and records conducted in accordance with this provision. The provisions of this section 9.19 shall be incorporated by Licensor in any permitted subcontract with a value or cost of \$10,000 or more.

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

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

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

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

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

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

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

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

- case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
- 9.26.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or
- 9.26.3 Making an assignment for the benefit of creditors; or
- 9.26.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Licensor's performance of its obligations under this Agreement
- 9.26.5 An order is entered approving an involuntary petition to reorganize the business of Licensor for all or part of its property; or
- 9.26.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Licensor is issued by any court or administrative agency against all or any material portion of Licensor's property; or
- 9.26.7 Taking any action to authorize any of the foregoing.

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

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

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

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

SECTION 10 EXECUTION

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

Licensor

By: _____

Date: _____

Title: _____

Licensee - State of Iowa, acting by and through the _____ Department

By: _____

Date: _____

Title: _____

LICENSE AGREEMENT SCHEDULE A DESCRIPTION OF SOFTWARE SUBJECT TO THE SOFTWARE LICENSE AGREEMENT
LICENSE AGREEMENT SCHEDULE B LICENSEE SYSTEMS ON WHICH THE SOFTWARE WILL BE INSTALLED INITIALLY
LICENSE AGREEMENT SCHEDULE C SOFTWARE ESCROW AGREEMENT (OPTIONAL)

RFP ATTACHMENT # 7

PROPOSED SOURCE CODE ESCROW AGREEMENT

[To be used when the Department agrees that Source Code will be held in escrow for its benefit by a third-party escrow agent.]

Deposit Account Number: _____

1. Introduction.

This Source Code Escrow Agreement (the “**Agreement**”) is entered into by and between [_____] (the “**Depositor**”), and by the State of Iowa, acting by and through the Iowa Department of _____- (the “**Beneficiary**”) and by [_____] (“**Escrow Agent**”) on this ___ day of ____, 2008 (the “**Effective Date**”). Depositor, Beneficiary, and Escrow Agent may be referred to individually as a “Party” or collectively as the “Parties” throughout this Agreement.

(a) The use of the term services in this Agreement shall refer to Escrow Agent services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached hereto (“**Services**”). A Party shall request Services under this Agreement by submitting a work request to the Escrow Agent for certain Escrow Agent Services (“**Work Request**”) via written instruction, with a copy of such request submitted to all parties.

(b) The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement (the “Software License Agreement”) conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to the Software License Agreement, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n). Terms not defined herein shall have the meaning or definition ascribed to them in the Software License Agreement, a copy of which is attached hereto.

2. Depositor Responsibilities and Representations.

(a) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement, including the Source Code and Documentation, as defined and described in the Software License Agreement (collectively “**Deposit Material**”) to Escrow Agent within thirty (30) days of the Effective Date. Depositor shall deposit and maintain at all times during the term of the Software License Agreement a complete copy of the Source Code (on a media and in an electronic format acceptable to Beneficiary) and all related Documentation for the most current version and immediately preceding version of the Software provided to Beneficiary under the Software License Agreement (and under any agreement involving maintenance and/or support of the Software) in escrow with Escrow Agent. As Enhancements are produced or made available by Depositor (including pursuant to any agreement involving maintenance and/or support of the Software), Depositor shall immediately thereafter deposit a complete copy of the Source Code (on a media and in an electronic format acceptable to Beneficiary) and all updated Documentation in escrow with Escrow Agent for Beneficiary’s benefit. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Escrow Agent using the form attached hereto as Exhibit B.

(b) Depositor represents and warrants that it lawfully possesses all Deposit Material provided to Escrow Agent under this Agreement free of any liens, pledges, security interests or other encumbrances as of the date of their deposit. Depositor represents, warrants and covenants that any Deposit Material liens or encumbrances made after their deposit will not prohibit, limit, or alter the rights and obligations of Escrow Agent under this Agreement. In the event the Beneficiary receives the Deposit Material in accordance with Exhibit C, Beneficiary’s use of the Deposit Material shall not be limited or otherwise adversely affected by any liens, pledges, security interests or other encumbrances granted or established by or on behalf of Depositor with respect to the Deposit Material. Depositor represents and warrants that with respect to the Deposit

Material, Escrow Agent's proper administration of this Agreement will not violate the rights of any third parties.

- (c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously. Depositor represents and warrants that the Deposit Material is in a form suitable for reproduction by computer equipment, and the Deposit Material includes all necessary materials to permit a programmer to recreate executable versions of the Software from the Source Code and to maintain and support the Software.
- (d) Depositor agrees, upon request by Escrow Agent, in support of Beneficiary's request for verification Services, to promptly complete and return the Escrow Deposit Questionnaire attached hereto as Exhibit D. Depositor consents to Escrow Agent's performance of any level(s) of verification Services described in Exhibit A attached hereto and Depositor further consents to Escrow Agent's use of a subcontractor to perform verification Services. Any such subcontractor shall be bound by the same confidentiality obligations as Escrow Agent and shall not be a direct competitor to either Depositor or Beneficiary. Escrow Agent shall be responsible for the delivery of Services of any such subcontractor as if Escrow Agent had performed the Services. Depositor represents that all Deposit Material is provided with all rights necessary for Escrow Agent to verify such proprietary technology and materials upon receipt of a Work Request for such Services or agrees to use commercially reasonable efforts to provide Escrow Agent with any necessary use rights or permissions to use materials necessary to perform verification of the Deposit Material. Depositor agrees to cooperate with Escrow Agent by providing reasonable access to its technical personnel for verification Services whenever reasonably necessary.
- (e) Depositor agrees to deposit with the Escrow Agent a new copy of the Deposit Material in the event that all or any material part of the Deposit Material then on deposit with the Escrow Agent is destroyed or so corrupted as to not be compilable into machine-readable form.

3. Beneficiary Request for Verification Services.

Beneficiary may submit verification Work Request to Escrow Agent for one or more of the Services defined in Exhibit A attached hereto and further consents to Escrow Agent's use of a subcontractor if needed to provide such Services. Beneficiary warrants that Escrow Agent's use of any materials supplied by Beneficiary to perform the verification Services described in Exhibit A is lawful and does not violate the rights of any third parties.

4. Escrow Agent Responsibilities and Representations.

- (a) Escrow Agent agrees to provide the Services requested by Authorized Person(s) (as identified in the "Authorized Person(s)/Notices Table" below) representing the Depositor or Beneficiary in a Work Request. Escrow Agent may reject a Work Request (in whole or in part), except for any Work Request by Beneficiary to Release Deposit Material, that does not contain all required information at any time upon notification to the Party originating the Work Request.
- (b) Escrow Agent will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Escrow Agent determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B attached hereto, Escrow Agent will notify Depositor and Beneficiary of such discrepancies and notate such discrepancy on the Exhibit B.
- (c) Escrow Agent will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.
- (d) Escrow Agent will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("SOW"). Escrow Agent and the requesting Party will mutually agree in writing to an SOW on the following terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of Verification testing; requesting Party responsibilities; Escrow Agent responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW

representatives for both the requesting Party and Escrow Agent with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein.

- (e) Escrow Agent will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Escrow Agent, unless otherwise agreed to by the Parties. Escrow Agent shall provide and exercise the same degree of care as is generally accepted to constitute industry best practices for commercial providers of source code escrow agent services.
- (f) Upon receipt of written instructions by both Depositor and Beneficiary, Escrow Agent will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions.

5. Payment.

The Party responsible for payment designated in Exhibit A ("**Paying Party**") shall pay to Escrow Agent all fees as set forth in the Work Request ("**Service Fees**"). All Service Fees payable by Depositor are due within thirty (30) calendar days from the date the invoice is received by the Depositor. Escrow Agent shall submit an invoice to the Paying Party requesting payment of the Service Fees specified in Exhibit A. Any invoice submitted to the Beneficiary shall comply with any applicable State of Iowa rules or procedures concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Beneficiary. The Beneficiary shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Beneficiary may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. The Beneficiary shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Beneficiary believes the invoice is inaccurate or incorrect. Any Service Fees not timely paid by the Depositor when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less.

6. Term and Termination.

- (a) The "**Term**" of this Agreement is for a period of one (1) year from the Effective Date ("**Initial Term**") and will automatically renew for additional one (1) year terms ("**Renewal Term**") and continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Escrow Agent with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Escrow Agent and Depositor with sixty (60) days' prior written notice of its intent to terminate this Agreement; or (iii) the Agreement terminates under another provision of this Agreement. If the Effective Date is not specified in the Introduction section, then the last date noted on the signature blocks of this Agreement shall be the Effective Date.
- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement. Except in the event of a termination of this Agreement due to the fault of or breach by Depositor, in which case Escrow Agent shall release the Deposit Material to the Beneficiary, Escrow Agent shall return the Deposit Material to the Depositor. If reasonable attempts to return the Deposit Material to Depositor are unsuccessful, Escrow Agent shall destroy the Deposit Material.
- (c) Agent shall be permitted to terminate this Agreement and return the Deposit Material to Depositor for the failure of the Beneficiary to timely pay any undisputed Service Fees for which Beneficiary is expressly responsible under Exhibit A; provided, however, that no termination may occur for non-payment of fees by Beneficiary unless and until the Escrow Agent has provided Beneficiary with sixty (60) days notice and Beneficiary fails to pay such undisputed fees within such sixty day period. Escrow Agent also may terminate this Agreement for any failure by Depositor to pay any Service Fees for which Depositor is expressly responsible under this Agreement if the Escrow

Agent provides written notice to the Parties of such failure or material breach and intention to terminate and Depositor fails to cure such failure or material breach within thirty (30) days after receipt of such notice; provided, however, that prior to any such termination becoming effective the Escrow Agent shall first deliver to the Depositor above all of the Deposit Material.

7. General Indemnity.

Subject to Section 10 and 11, Depositor shall defend, indemnify and hold harmless the other Parties, their corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the Depositor or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

8. Warranties.

- (a) ESCROW AGENT REPRESENTS AND WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER.
- (b) Depositor represents and warrants that all Depositor information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor information during the Term of this Agreement.
- (c) Beneficiary warrants that all Beneficiary information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary information during the Term of this Agreement.
- (d) Ownership Warranty. Depositor warrants that it is the owner or legal custodian of the Deposit Material and has full authority to store the Deposit Material and direct their disposition in accordance with the terms of this Agreement. Depositor shall reimburse Escrow Agent for any expenses reasonably incurred by Escrow Agent (including reasonable legal fees) by reason of Escrow Agent's compliance with the instructions of Depositor in the event of a dispute concerning the ownership, custody or disposition of Deposit Material stored by Depositor with Escrow Agent.

9. Confidential Information.

Escrow Agent shall have the obligation to protect the confidentiality of the Deposit Material. Except as provided in this Agreement Escrow Agent shall not disclose, transfer, make available or use the Deposit Material. Escrow Agent shall not disclose the terms of this Agreement to any third Party. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Escrow Agent will notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Escrow Agent may comply in good faith with such order. It shall be the responsibility of Depositor or Beneficiary to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

10. Limitation of Liability.

ESCROW AGENT'S LIABILITY TO DEPOSITOR, IF ANY, WHETHER ARISING IN CONTRACT OR TORT, SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF ALL FEES PAID OR OWED TO ESCROW AGENT UNDER THIS AGREEMENT. IF ANY CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO LIMIT ESCROW AGENT'S LIABILITY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) DAMAGE TO TANGIBLE PROPERTY ; (IV) THEFT; (V) NEGLIGENCE OR WILLFUL

MISCONDUCT; OR (VI) ESCROW AGENT'S FAILURE TO DELIVER THE DEPOSIT MATERIALS TO BENEFICIARY UPON BENEFICIARY'S WRITTEN REQUEST AS PROVIDED IN EXHIBIT C. THIS PROVISION AND THE LIMITATIONS ON LIABILITY SHALL NOT APPLY TO BENEFICIARY.

11. Consequential Damages Waiver.

IN NO EVENT SHALL ESCROW AGENT BE LIABLE TO DEPOSITOR FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT OR TORT. THIS SECTION 11 SHALL NOT APPLY TO LIMIT ESCROW AGENT'S LIABILITY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) DAMAGE TO TANGIBLE PROPERTY ; (IV) THEFT; (V) NEGLIGENCE OR WILLFUL MISCONDUCT; OR (VI) ESCROW AGENT'S FAILURE TO DELIVER THE DEPOSIT MATERIALS TO BENEFICIARY UPON BENEFICIARY'S WRITTEN REQUEST AS PROVIDED IN EXHIBIT C. THIS PROVISION AND THE LIMITATIONS ON LIABILITY SHALL NOT APPLY TO BENEFICIARY.

12. General.

- (a) Incorporation of Work Requests. All valid Depositor and Beneficiary Work Requests are incorporated into this Agreement.
- (b) Right to Make Copies. Escrow Agent shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Escrow Agent shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Escrow Agent. Any copying expenses incurred by Escrow Agent as a result of a Work Request to copy will be borne by the Party requesting the copies. Escrow Agent may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Escrow Agent to perform this Agreement.
- (c) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled and governed by and construed under the laws of the State of Iowa, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.
- (d) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such party ("Authorized Person" who shall be identified in the Authorized Persons (s) Notices Table of this Agreement) and who may manage the Escrow Agent escrow account through the Escrow Agent website or written instruction. The Authorized Person for each the Depositor and Beneficiary will maintain the accuracy of their name and contact information provided to Escrow Agent during the term of this Agreement.
- (e) Right to Rely on Instructions. Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine and from an Authorized Person(s), officer, or other employee of a Party. Escrow Agent may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so.
- (f) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (g) Notices. All notices regarding Exhibit C (release) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including invoices, payments, and other documents and

communications, may be sent electronically or via regular mail. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to last known address of the other Parties that is relied on herein and that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities by mail, through messenger or commercial express delivery services.

- (h) No Waiver. No waiver of rights under this Agreement by any Party shall constitute a subsequent waiver of this or any other right under this Agreement.
- (i) Assignment. No assignment of this Agreement by Depositor or any rights or obligations of Depositor under this Agreement is permitted without the written consent of Escrow Agent, which shall not be unreasonably withheld or delayed. Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor unless Escrow Agent receives clear, authoritative and conclusive written evidence of the change of parties.
- (j) Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. If this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for any Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by written notice to the others.
- (k) Independent Contractor Relationship. Depositor and Beneficiary understand, acknowledge, and agree that Escrow Agent's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (l) No Agency. No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (m) Disputes. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought or commenced only 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 only in the United States District Court for the Southern District of Iowa, Central Division.
- (n) Regulations. All Parties are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.
- (o) No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.
- (p) Entire Agreement. The Parties agree that this Agreement, which includes all the Exhibits attached hereto and all valid Work Requests submitted by the Parties, is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of the Parties.

- (q) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (r) Survival. Sections 6 (Term and Termination), 7 (General Indemnity), 8 (Warranties), 9 (Confidential Information), 10 (Limitation of Liability) 11(Consequential Damages Waiver), and 12 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.
- (s) All of the terms, provisions and condition so this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives.
- (t) The Escrow Agent shall maintain books, records, and documents which sufficiently and properly document the Escrow Agent's compliance with the terms of this Agreement and show all charges billed to or paid by the Beneficiary named above throughout the term of this Agreement for a period of at least five (5) years following the termination or expiration of this Agreement, or completion of any required audit. The Escrow Agent shall permit the Beneficiary, the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Escrow Agent relating to this Agreement. The Escrow Agent shall not impose or seek payment for any charge, fee or expense associated with any audit or examination of its books and records conducted in accordance with this provision.
- (u) Time is of the essence with respect to performance by the Escrow Agent and Depositor of their respective obligations under this Agreement.

DEPOSITOR

COMPANY NAME:	
SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS	

BENEFICIARY

COMPANY NAME:	
SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	

ESCROW AGENT

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	

DEPOSITOR -- AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

COMPANY:	
ADMINISTRATIVE CONTACT PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
ADDRESS 1	
ADDRESS 2	
CITY/STATE/PROVINCE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

BENEFICIARY -- AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

COMPANY:	
ADMINISTRATIVE CONTACT PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
ADDRESS 1	

ADDRESS 2	
CITY/STATE/PROVINCE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

ESCROW AGENT

TITLE:	
EMAIL ADDRESS	
ADDRESS 1	
ADDRESS 2	
CITY/STATE/PROVINCE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

BILLING CONTACT INFORMATION TABLE

Please provide the name and contact information of the Billing Contact under this Agreement.
All Invoices will be sent to this individual at the address set forth below.

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	
PURCHASE ORDER #	

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	
PURCHASE ORDER #	

[MUST BE COMPLETED] EXHIBIT A - Escrow Service Work Request - Deposit Account
Number: _____

SERVICE Check box(es) to order service	SERVICE DESCRIPTION – THREE PARTY ESCROW AGREEMENT All services are listed below. Services in shaded tables are required for every new escrow account set up. Some services may not be available under the Agreement.	ONE- TIME FEES	ANNUAL FEES	PAYING PARTY Check box to identify the Paying Party for each service below.
☒ Setup Fee ☒ Deposit Account Fee- ☒ Beneficiary Fee	Escrow Agent will setup a new escrow deposit account. Escrow Agent will set up one deposit account to manage and administrate access to Deposit Material that will be securely stored in controlled media vaults. Furthermore, Escrow Agent will provide account services that include unlimited deposits. A Client Manager will be assigned to each deposit account. Escrow Agent will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. Beneficiary. A Client Manager will be assigned to each deposit account and to Beneficiary and will ensure fulfillment of Work Requests.			☐ Depositor - ☐ Depositor - ☐ Depositor - OR - ☐ Beneficiary
☐ Add Deposit Tracking Notification	At least semi-annually, Escrow Agent will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit. .			☐ Depositor -
☐ Add File Comparison and Analysis Test	Escrow Agent will fulfill a Work Request to perform a File Comparison and Analysis Test, which includes analyzing deposit media readability, file listing, creation of file classification table, virus scan, assurance of completed deposit questionnaire, and analysis of completed deposit questionnaire. A final report will be sent to the Parties regarding the Deposit Material to ensure consistency between Depositor's representations (i.e., Exhibit B and Supplementary Questionnaire) and stored Deposit Material.		N/A	☐ Depositor - OR - ☐ Beneficiary
☐ Add Deposit Compile Test	Escrow Agent will fulfill a Work Request to perform a Deposit Compile Test, which includes the File Comparison and Analysis Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Parties regarding the Deposit Material. The Paying Party and Escrow Agent will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	☐ Depositor - OR - ☐ Beneficiary
☐ Add Deposit Usability Test – Binary Comparison	Escrow Agent will fulfill a Work Request to perform one Deposit Compile Test Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Beneficiary regarding the Deposit Material. The Paying Party and Escrow Agent will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	☐ Depositor - OR - ☐ Beneficiary
☐ Add Deposit Usability Test – Full Usability Test	Escrow Agent will fulfill a Work Request to perform one Deposit Compile Test Full Usability which includes a confirmation that the built applications work properly when installed. A final report will be sent to the Parties regarding the Deposit Material. The Paying Party and Escrow Agent will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	☐ Depositor - OR - ☐ Beneficiary

☐ Add Dual/Remote Vaulting	Escrow Agent will fulfill a Work Request to store deposit materials in one additional location as defined within the Service Agreement. Duplicate storage request may be in the form of either physical media or electronic storage.			☐ Depositor -
☐ Release Deposit Material	Escrow Agent will process Beneficiary's Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Materials" the Escrow Service Agreement.	No Fee for Release	N/A	N/A
☐ Add Custom Services	Escrow Agent will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.	Based on SOW	N/A	☐ Depositor - OR - ☐ Beneficiary

SOURCE CODE ESCROW AGREEMENT

EXHIBIT B - DEPOSIT MATERIAL DESCRIPTION

COMPANY NAME: _____ ESCROW ACCOUNT
 NUMBER: _____
 DEPOSIT NAME _____ AND DEPOSIT VERSION _____
 (Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
☐ CD-ROM / DVD		☐ 3.5" Floppy Disk	
☐ DLT Tape		☐ Documentation	
☐ DAT Tape		☐ Hard Drive / CPU	
		☐ Circuit Board	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
☐ Internet File Transfer			
☐ Other (please describe below):			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? ☐ Yes or ☐ No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

☐ I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Escrow Agent at the address below.	☐ Escrow Agent has inspected and accepted the above described Deposit Material either electronically or physically. Escrow Agent will notify Depositor of any discrepancies.
NAME:	NAME:
PRINT NAME:	PRINT NAME:
DATE:	DATE:
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

Note: If Depositor is physically sending Deposit Material to Escrow Agent, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:

FOR ESCROW AGENT USE ONLY: (NOTED DISCREPANCIES ON VISUAL INSPECTION)

SOURCE CODE ESCROW AGREEMENT EXHIBIT C

Release of Deposit material

Deposit Account Number: _____

Escrow Agent will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 12(g) Notices.

1. Release Conditions. Beneficiary may submit a Work Request for the release of the Deposit Material, and the Escrow Agent will release and deliver the Deposit Material to Beneficiary, based on one or more of the following conditions (defined as “**Release Conditions**”):
 - (i) Depositor violates or commits a breach of any material term or condition of the Software License Agreement or any agreement relating to maintenance and support of the Software, and Depositor fails to cure such breach within any time period established for curing such breach, provided cure is feasible;
 - (ii) Depositor assigns, transfers, delegates or subcontracts any of its maintenance or support obligations under, or any interest in, any agreement it may have with Beneficiary relating to maintenance and support of the Software, without the prior written consent of Beneficiary;
 - (iii) Depositor ceases to provide maintenance and support to Beneficiary, whether due to its ceasing to conduct business generally or otherwise, including, but not limited to Depositor’s decision to no longer maintain or support the Software provided to Depositor under the Software License Agreement;
 - (iv) Depositor terminates or suspends its business or ceases to do business;
 - (v) Depositor becomes subject to any bankruptcy or insolvency proceeding under federal or state law;
 - (vi) Depositor has become insolvent or unable to pay its obligations as they accrue or become due;
 - (vii) Depositor makes an assignment for the benefit of Depositor’s creditors;
 - (viii) a receiver, trustee, liquidator, custodian or similar official has been appointed to act on behalf of the Depositor with respect to any of its operations or assets;
 - (ix) Depositor merges, is sold, or enters into an agreement to sell all or substantially all of its assets, resulting in Depositor’s failure to remain a party to, or otherwise retain all of its rights and obligations under, the Software License Agreement or any agreement relating to maintenance and support of the Software, and the survivor or acquirer does not assume all of Depositor’s rights and obligations under such agreements, whether by operation of law, written agreement or otherwise; or
 - (x) Depositor violates or commits a breach of any term or condition of this Agreement, which breach has not been cured by Depositor within any applicable time period stated herein for curing such breach.

2. Release Work Request. Beneficiary may submit a written Work Request to Escrow Agent to release the Deposit Material covered under this Agreement. In such Work Request, Beneficiary must specify the Release Condition(s) that has/have occurred. Beneficiary will transmit a copy of the Work Request to Depositor on the same day it transmits such request to Escrow Agent.
3. Release of Deposit Material. Within ten (10) days of Escrow Agent's receipt of Beneficiary's Work Request to release the Deposit Material, Escrow Agent will release and deliver the Deposit Material to Beneficiary.
4. Termination of Agreement Upon Release. This Agreement will terminate upon the Escrow Agent's actual delivery of all Deposit Material to Beneficiary in accordance with the terms of this Agreement.
5. Right to Use Following Release. Upon release of the Deposit Materials, Beneficiary shall have all rights and privileges set forth in the Software License Agreement with respect to the Software and Deposit Material. Beneficiary shall be obligated to adhere to any applicable confidentiality obligations set forth in Section 9.2 of the Software License Agreement with respect to the released Deposit Material.

SOURCE CODE ESCROW AGREEMENT EXHIBIT D

Escrow Deposit Questionnaire

Introduction

From time to time, Beneficiary may exercise its right to perform verification services. This is a service that Escrow Agent provides for the purpose of validating relevance, completeness, currency, accuracy and functionality of deposit materials.

Purpose of Questionnaire

In order for Escrow Agent to determine the deposit material requirements, a completed deposit questionnaire is requested. It is the responsibility of the Depositor to complete the questionnaire.

Instructions

Please complete the questionnaire in its entirety by answering every question with accurate data. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to Escrow Agent.

General Description

1. What is the general function of the software to be placed into escrow?
2. On what media will the source code be delivered?
3. What is the size of the deposit in megabytes?

Requirements for the Execution of the Software Protected by the Deposit

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.)
2. How many machines are required to completely set up the software?
3. What are the software and system software requirements, to execute the software and verify correct operation?

Requirements for the Assembly of the Deposit

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?)
2. How many build processes are there?
3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?
4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)
5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems/version?
6. How many separate deliverable components (executables, share libraries, etc.) are built?
7. What compilers/linkers/other tools (brand and version) are necessary to build the application?
8. What, if any, third-party libraries are used to build the software?
9. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?
10. Do you have a formal build document describing the necessary steps for system configuration and compilation?
11. Do you have an internal QA process? If so, please give a brief description of the testing process.
12. Please list the appropriate technical person(s) Escrow Agent may contact regarding this set of escrow deposit materials.

Please provide your technical verification contact information below:

COMPANY:	
SIGNATURE:	
PRINT NAME:	
ADDRESS 1:	
ADDRESS 2:	
CITY, STATE, ZIP	
TELEPHONE:	
EMAIL ADDRESS:	