

NOTICE TO CONTRACTORS

REQUEST FOR PROPOSAL

STATE OF IOWA
JUDICIAL BRANCH

ELECTRONIC DOCUMENT MANAGEMENT SYSTEM

This Request for Proposal (RFP) seeks a contractor or contractors to implement an Electronic Document Management System (hereinafter “EDMS”) to facilitate the electronic filing of information/documents with Courts of Iowa. The successful solution or solutions will conform to the State of Iowa Judicial Branch Business Plan adopted and the solution will use technologies, methodologies, and deliverables already procured under that plan.

Submitted by:

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CHAPTER 1 – BACKGROUND INFORMATION

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1.0. Chapter Purpose

- A. This chapter provides the background information necessary for Contractors to submit responsive proposals.

1.1. Project Background

- A. Background. The Iowa Judicial Branch has implemented a statewide case management system called the Iowa Court Information System (ICIS). The Iowa Court Information Systems includes the following:

1. An extensive case management application
2. A juvenile probation case management application
3. An infrastructure of system servers, networks and PCs

In concert with a number of other leading states, Iowa has taken bold steps toward unifying its court system and streamlining the administrative organization to provide a more uniform justice system for its citizens. Local practices and procedures developed over time when courts were organized, managed, staffed and funded as local units of government, although similar in nature from county to county, to more uniform policies and procedures developed centrally and promulgated from the State Court Administrator's Office for use throughout the system.

- B. A description of the Business Problem in the Judicial Branch

The Judicial Branch has invested in developing and maintaining a feature rich and business process driven case management system. There are case management systems for the trial courts to support traditional functions of docketing, noticing, financial management and case scheduling. There is a juvenile offender based case management system. Despite this progress, the Judicial Branch has identified problems with the present case management system, including the following:

- Judges cannot get case files quickly.
- Only one individual can have a case file at any time – often a file is unavailable because someone else is using it.
- As judges ride the circuit, they often do not have access to files housed in other courthouses.
- Judges cannot find specific text in filed documents.
- The court wastes valuable staff time locating, pulling and re-filing case files.
- Court staff spends inordinate amounts of time extracting information from documents and entering it into ICIS.

- There is no paper trail for documents moving through the courthouse.
- Newly filed documents do not always make their way into a case file in time for scheduled hearings.
- There is not enough room in the courthouses to store paper files.
- Case file materials are damaged by repeated access.
- Case files and documents are lost, defaced, or stolen by the public.
- Documents get lost while being passed from clerk to clerk.
- Attorneys cannot get timely access to court materials.
- Attorneys face high costs and unreliable services in filing documents with the court.

C. The Judicial Branch vision of EDMS.

- To provide a means for attorneys and litigants to electronically file documents with the Clerk.
- To provide a web interface for attorneys and litigants to complete a cover sheet of case data and then attach their document/s.
- To provide a user friendly web interface for attorneys and litigants to use for electronic filing.
- To provide a secure web interface to ensure the integrity of documents and data provided to the Clerk.
- To provide for a secure financial transaction to account for the fees associated with filing of documents with the Court.
- To provide for a document management system to manage the electronic file as the document moves through the various legal processes of the court.
- To provide for workflow to move documents through defined business processes.
- To provide electronic public access to filed documents using the internet.

1.2. Project Description and Purpose

- A. Purpose. In this RFP, the Judicial Branch seeks the technology infrastructure that will allow electronic filing and electronic access to court documents in a timely manner.
- B. Description. The Judicial Branch seeks a contractor or contractors to implement an Electronic Document Management System (hereinafter “EDMS”) to facilitate the electronic filing of information/documents with Courts of Iowa. EDMS will manage the filing, routing and document management and will assure that it is secure and from authenticated sources as well as managing the business flow based on rules and content of the documents. EDMS will be the centerpiece for the E-Filing solution

in the Judicial Branch of Iowa. EDMS will support the attorneys and the citizens wishing to electronically file and access court documents.

- C. Instructions Given. This RFP provides detailed instructions for the development of proposals to provide the required service. This RFP and the winning proposal of the successful Contractor or Contractors shall be included as mandatory parts of the contract between the State and the successful Contractor or Contractors.

1.3. Definitions

- A. The terms given in this subsection may be used throughout the RFP and are provided here to ensure uniformity of understanding. The State reserves sole discretion to determine where and whether a particular definition applies, and as appropriate, whether any part of a proposal complies with a definition in this section. Please refer to Appendix 10 for the definition of terms used.
- B. If the Contractor's proposal uses any of the terms defined in this section in a way other than how defined, the Contractor's proposal must clearly articulate its definition of the terms.
- C. If more than one version exists of a standard or specification defined below, the Contractor **must** articulate which version of the standard or specification will be implemented in its solution along with why that version of the standard was selected for implementation, and the Contractor **must** provide a reference to the standard in its proposal.
- D. "Judicial Branch web site." May be accessed over the Internet at <http://www.judicial.state.ia.us>.
- E. "Nonmaterial Variances." These include, at the State's discretion, minor informalities:
1. That do not affect responsiveness;
 2. That are merely a matter of form or format;
 3. That do not change the relative standing or otherwise prejudice other Contractors;
 4. That do not change the meaning or scope of the RFP; or
 5. That do not reflect a material change in the products and services.

F. “The Plan.” This refers to the Judicial Branch’s Business Plan. A copy of The Plan may be downloaded from the Internet at <http://www.judicial.state.ia.us>.

G. “Issuing Officer.” The issuing officer for this RFP is:

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CHAPTER 2 – CONTRACTUAL TERMS AND CONDITIONS

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2.0. Chapter Purpose

- A. This Chapter provides administrative guidance and outlines many of the policies and procedures required and expected of Contractors who submit proposals.

2.1. Issuing Officer and Restriction on Communication

- A. **Issuing Officer.** The Issuing Officer, identified in section 1.3.G, is the sole point of contact regarding the RFP from the date of issuance until selection of the successful contractor.
- B. **Restriction on Communication.** From the date of the issuance of this RFP until the announcement of the successful contractor, contractors may contact only the Issuing Officer. If a contractor or someone acting on a contractor's behalf attempts to discuss this RFP, orally or in writing, with any employee of the Judicial Branch, other than the Issuing Officer, the Judicial Branch may disqualify the contractor.

2.2. Procurement Timetable

The following dates set forth below are for informational planning purposes. The Judicial Branch reserves the right to change the dates.

2.3. Vendor Conference

A vendor conference will be held at 2:00 p.m. on April 30, 2007 in the Judicial Branch Building. This conference is optional. This is not required.

2.4. Questions, Requests for Clarification and Suggested Changes

- A. Contractors may submit written questions and requests for clarification about the RFP to the Issuing Officer. In addition, contractors may submit suggestions for changes to the requirements of this RFP. The Issuing Officer will not accept oral inquiries from contractors.
- B. If a question, request for clarification, or suggestion pertains to a specific section of this RFP, please identify the specific page and section numbers.
- C. The Issuing Officer must receive all questions, request for clarification, or suggestions by mail, electronic mail, and delivery, or facsimile no later than 4:30 p.m. on **May 4, 2007**.
- D. The Judicial Branch will respond to the questions in writing by posting answers on the Judicial Branch web site on or before **May 11, 2007**.

- E. The Judicial Branch assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP.
- F. The Judicial Branch reserves the right to contact a Contractor after the submission of proposals for the purpose of clarifying a proposal to ensure mutual understanding. This contact may include written questions, interviews, demonstrations, site visits, a review of past performance if the Contractor has provided goods or services to the State or any other political subdivision wherever located, or requests for corrective pages in the Contractor's proposal. The Judicial Branch will not consider information received if the information materially alters the content of the proposal or alters the type of goods and services the Contractor is offering to the Judicial Branch. An individual authorized to legally bind the Contractor must sign responses to any request for clarification. A contractor must provide the information to the Judicial Branch within the time specified in the Judicial Branch's request. Failure to comply with requests for additional information may result in rejection of the proposal as non-compliant.

2.5. Amendment to the RFP and the Proposal and Withdrawal of Bid Proposal

- A. The Judicial Branch reserves the right to amend the RFP at any time. If it becomes necessary to amend any part of the RFP, the Judicial Branch will issue an amendment by posting the amendment to the Judicial Branch web site. A contractor's proposal must acknowledge all addenda.
- B. A contractor who submits a proposal before the deadline for receipt of proposals may withdraw, modify, and resubmit proposals at a time before the deadline for submitting proposals. A contractor must notify the Issuing Officer in writing if they wish to withdraw their proposal before the deadline for the receipt of proposals.

2.6. Rejection of Proposals

- A. Right to Reject. The Judicial Branch reserves the right to reject any or all proposals or any portion of a proposal without penalty at any time before the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by the Judicial Branch to award a contract or to execute a binding contract with any Contractor that may be selected as a result of this RFP. The Judicial Branch further reserves the right to cancel this RFP, to issue a new RFP, to award a contract in whole or in part, to perform any or all of the services described in this RFP if it is in the best interests of the Judicial Branch.
- B. Reasons for Rejection. The Judicial Branch will reject a proposal outright and will not evaluate a proposal for any one or more of the following

reasons:

- The Contractor fails to deliver the proposal by the due date and time.
- The Contractor fails to deliver the cost proposal in a separate envelope.
- The Contractor's response materially changes a service requirement.
- The Contractor's response limits the rights of the State.
- The Contractor fails to include information necessary to substantiate that it will be able to meet a service requirement.
- The Contractor fails to respond to the State's request for information, documents, or references.
- The Contractor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in Chapter 4 of this RFP.
- The Contractor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- The Contractor violates any restriction imposed by this RFP.
- The Contractor provides misleading or inaccurate responses.
- The Contractor's proposal is materially unbalanced.
- Failure to include the required Response Form(s) signed by an officer of the company submitting the proposal.
- Failure to follow the proposal format instructions as specified in this RFP.
- Any other ground expressly stated in any part of this RFP.

2.7. Letters of Intent to Bid

- A. To be eligible to submit a proposal in response to this RFP, each contractor must submit a letter of intent to bid to the Issuing Officer by 4:30 p.m. on **May 4, 2007**. The letter of intent to bid must include a statement that the contractor intends to submit a proposal in response to this RFP. The letter of intent must also include the contractor's name, mailing address, electronic mail address, fax number, telephone number.

- B. Submitting a letter of intent is a mandatory requirement to submit a proposal in response to this RFP. The Judicial Branch will reject any proposal by a contractor who fails to submit a letter of intent by the deadline established in this section.

2.8. Submission of Proposals

- A. The Issuing Officer must receive proposals no later than 3:00 p.m. (CDT) on **June 1, 2007**. The Judicial Branch will reject any proposal received after this deadline and will return the proposal unopened to the contractor.
- B. Contractors mailing proposals must allow ample mail delivery time to ensure timely receipt of their proposals. Contractors are solely responsible to ensure that the Issuing Officer receives the proposals before the deadline. Postmarking by the date due is not a substitute for actual receipt by the Judicial Branch. The Judicial Branch will not accept electronic mail and faxed proposals.

2.9. Waiver of Deficiencies and Nonmaterial Variations

- A. The Judicial Branch reserves the right to waive or permit cure of nonmaterial variances in a proposal if it is in the Judicial Branch's best interest. Nonmaterial variances include minor informalities that do not affect responsiveness, variances that are merely a matter of form or format, variances that do not change the relative standing of other vendors, variances that do not prejudice other vendors, variances that do not change the meaning or scope of the RFP, or variances that do not reflect a material change in the services. Nonmaterial variances do not include a contractor's failure to comply with any mandatory requirement or mandatory information. If the Judicial Branch waives or permits cure of nonmaterial variances, it will not modify the RFP requirements or excuse the contractor from full compliance with RFP specifications or other contract requirements if the contractor is awarded the contract. The determination of whether a particular matter constitutes a material or nonmaterial variation from the RFP is within the sole discretion of the Judicial Branch.

2.10. Cost of Preparing the Proposal

- A. The costs of preparing the proposal are the sole responsibility of the contractor. The Judicial Branch is not responsible for any costs incurred by a contractor that are related to the preparation or delivery of the proposal or any other activities carried out by the contractor related to this RFP.

2.11. Sources of Information Use by Judicial Branch

- A. The Judicial Branch reserves the right to contact contractors after the

submission of proposals to clarify a proposal and to ensure mutual understanding. The Judicial Branch will not permit a contractor to modify or amend its proposal if contacted by the Judicial Branch for this reason. The Judicial Branch will contact the contractor in writing and the contractor will respond in writing.

- B. The Judicial Branch reserves the right to verify the contents of a proposal. Misleading or inaccurate responses will result in disqualification.
- C. The Judicial Branch reserves the right to conduct criminal history and other background investigation of the contractor, its officers, directors, shareholders, partners, and managerial and supervisory personnel retained by the contractor for the performance of the contract.
- D. The Judicial Branch assumes no responsibility for representations made by its employees before the execution of a legal contract, unless such representations are specifically incorporated into this RFP. The Judicial Branch will not be bound by any representations and not included in the RFP.
- E. The Judicial Branch reserves the right to obtain, from any source, information concerning a contractor or a contractor's product, services, personnel, or subcontractors. The Judicial Branch also reserves the right to obtain and consider information from other sources such as the contractor's performance of other contracts. The Judicial Branch may use any of this information to evaluate a contractor's proposal.

2.12. Opening of Proposals

- A. The Issuing Officer will open proposals at 3:00 p.m. on **June 1, 2007**. At that time, the Issuing Officer will announce the names of the contractors who submitted timely proposals. Announcement of the names of the contractors who submitted proposals is not a guarantee that the proposals otherwise comply with the requirements of this RFP. The proposals will remain confidential until the Evaluation Committee has reviewed all of the proposals submitted in response to this RFP and a notice of award is announced in accordance with Iowa Code section 72.3. The proposals will be available for inspection after the notice of award is announced consistent with the requirements of chapter 22 of the Iowa Code.

2.13. Presentations

- A. The Judicial Branch may ask selected Contractors to make a presentation of the proposal during the final evaluation stage. The presentation may occur at the Judicial Branch's offices, or another location chosen by the Judicial Branch. The determination as to the location, order, and schedule of the presentations and the Contractor or Contractors selected to present are at the sole discretion of the Judicial Branch. The presentation may

include slides, graphics and other media selected by the Contractor to illustrate the Contractor's proposal. The presentation must not materially change the information contained in the proposal. The presentations may be video recorded by the State and representations made by the Contractor during the presentation shall be considered part of the RFP proposal.

2.14. Proposals Valid for 120 Days

- A. All proposals are firm for a period of 120 days following the date on which proposals are due.

2.15. Proposal Evaluation and Award

- A. The Judicial Branch will evaluate compliant proposals using the evaluation procedures found in this RFP. The Judicial Branch may not necessarily award the contract to the contractors submitting the lowest priced proposal. Instead, the Judicial Branch will award the contract to the compliant vendor whose proposal received the most points using the evaluation criteria, subject to the State Court Administrator's approval whose decision will be binding and final.

2.16. Notice of Award

- A. The Judicial Branch will issue a notice of award of the contract by posting a notice on its web site.
- B. Notice of award does not constitute a contract between the Judicial Branch and the contractor. A contract does not exist unless and until the successful contractor and the Judicial Branch sign a written contract.
- C. The apparent successful contractor must complete contract negotiations and sign the contract with the Judicial Branch no later than **August 15, 2007**. If the apparent successful contractor fails to negotiate and sign the contract by that date, the Judicial Branch may, in its sole discretion, now rescind the award and award the contract to the next highest ranked contractor.

2.17. Proposals Property of Judicial Branch

- A. All proposals will become the property of the Judicial Branch and will not be returned to the contractor unless all proposals are rejected or no award is made. Because the Judicial Branch will return proposals if all proposals are rejected and no award is made, contractors should send prepaid shipping instruments to the State for return of the proposals submitted. If the Judicial Branch does not receive shipping instruments, it will destroy the proposals. Otherwise, the contents of all 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.

2.18. Public Records and Request for Confidentiality

- A. The Judicial Branch may treat all information submitted by contractor as a public record under Iowa Code chapter 22 unless the contractor properly requests that the information be treated as confidential when the proposal is submitted.
- B. Any request for confidential treatment of information must be included in the transmittal letter with the contractor's proposal. Any such request must (1) identify the specific grounds in the Iowa Code chapter 22 that support treatment of the materials as confidential; (2) explain why disclosure of the material is not in the best interest of the public; and (3) include the name, address, and telephone number of the person authorized by the contractor to respond to any inquiries by the Judicial Branch about the confidential status of the materials.
- C. Any documents submitted that contain confidential information must be marked on the outside as containing confidential information, and each page upon which confidential information appears must be marked as containing confidential information. The confidential information must be clearly identifiable to the reader where it appears. All copies of the proposals submitted, as well as the original proposal, must be marked in this manner. The Judicial Branch will treat any proposal as non-responsive that identifies the entire proposal as being confidential, and it will disqualify the contractor.
- D. In addition to marking the material as confidential material where it appears, the contractor must submit one copy of the relevant pages of the proposal from which the confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the documents as possible. These pages must be submitted with the transmittal letter and will be made available for public inspection.
- E. Judicial Branch will treat information marked confidential as confidential information to the extent a court of competent jurisdiction concludes that it is confidential under Iowa Code chapter 22 or other provisions of applicable law.
- F. If the Judicial Branch receives a request for information marked confidential, it will notify the contractor 72 hours before the release of the information so that the contractor can seek injunctive relief under Iowa Code section 22.8.
- G. A contractor's failure to request confidential treatment of material under this section and the relevant laws constitutes a waiver of confidentiality.

2.19. Copyrights

- A. By submitting a proposal, a contractor agrees that the Judicial Branch may copy the proposal for the purpose of evaluating the proposal or responding to requests for public records. The contractor represents and warrants such copying will not violate the rights of any party. In addition, by submitting a proposal, a contractor grants the Judicial Branch the right to use the ideas or adapt the ideas found in the proposals.

2.20. Restrictions on Gifts and Activities

- A. Iowa Code chapter 68B restricts gifts that may be given or received by state officers and employees and requires certain individuals to disclose information about their activities with state government. Contractors are solely responsible for determining the applicability of this chapter to their activities and comply with these requirements. In addition, Iowa Code section 722.1 states that it is a felony offense to bribe a public official.
- B. The Judicial Branch reimburses its employees for transportation, lodging, meals and miscellaneous expenses that are deemed necessary.

2.21. Construction of RFP with Laws and Rules

- A. This RFP will be construed in light of pertinent legal requirements. Changes in applicable laws and rules may affect the award process or the resulting contract. Contractors are responsible for ascertaining pertinent legal requirements and restrictions.

2.22. Release of Claims

- A. By submitting a proposal, each contractor agrees that it will not bring any claim or have any cause of action against the Judicial Branch based on any misunderstanding concerning the information provided in this RFP or concerning the Judicial Branch's failure, negligence or otherwise, to provide the contractor with pertinent information under this RFP.

2.23. Content of RFP

- A. This RFP provides contractors with information necessary for the preparation of competitive proposals. Each contractor is responsible for determining all factors necessary for the submission of any comprehensive and compliant proposal.
- B. Contractors must base their proposals solely on the information contained in the RFP. Contractors must disregard any draft materials that they may have received, any newspaper articles they may have read, and any other previous oral or written representations.

2.24. Preparation of the Proposal

A. Drafting the Proposal

1. Contractors must furnish all information necessary to evaluate the proposal. The Judicial Branch will reject all proposals that fail to meet the mandatory requirements of the RFP.
2. The “Official Proposal” must be in ink or typewritten. Amendments must be made using strikethrough (~~strikethrough~~) text, and each separate amendment must be initialed. All amendments must be received before the proposal due date.

- B. Use of Provided Forms. All parts of this RFP require the use of the Response Forms that are included in the RFP document. Use of these Response Forms is **MANDATORY**. Unless otherwise instructed, do not retype these forms. If additional copies are needed, make additional copies on an office copy machine. Failure to use the response forms will be considered unresponsive and will result in the summary rejection of the Contractor’s proposal.

C. Packaging the Proposal

1. The sealed “Official Technical Proposal” and the separately sealed “Official Cost Proposal”, containing the original signatures, nine (9) duplicate copies of each, plus separate soft copies on CD of each the Technical and Cost Proposal, in MS Word format, shall be delivered in a sealed package or packages. Cost proposal materials must be sealed and delivered separately from technical proposal materials. All sealed packages and CDs must be clearly labeled on the outside of the package with the following information:
 - Name and Address of the Issuing Officer
 - Contractor’s Name and Address
 - Contact Person and Telephone Number
 - Project Title and RFP Number
 - Proposal Due Date and Time
 - “Technical Proposal” or “Cost Proposal”, as appropriate
 - “Original” or “Duplicate”, as appropriate
2. In addition, if multiple packages per proposal are used, the packages comprising the complete proposal must be numbered in the following fashion (i.e., 1 of 4, 2 of 4, etc.).

2.25. Economy of Presentation

- A. Proposals must not contain promotional or display materials. Proposals shall only address the requirements of this RFP. All questions posed by the RFP shall be answered concisely and clearly. Failure to comply with this requirement may result in summary disqualification of the proposal.

2.26. Multiple Proposals

- A. The Judicial Branch is seeking proposals that meet its requirements as outlined in the RFP. If more than one method of meeting these requirements is proposed by the same contractor, each should be labeled and submitted separately. Each proposal shall be evaluated separately.

2.27. Certification of Independent Price Determination

- A. By submitting a proposal, each contractor agrees that:
 - 1. The prices in the proposal were arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any competitor.
 - 2. Unless otherwise required by law, the prices in the proposal have not been knowingly disclosed by any contractor and shall not knowingly be disclosed by the Contractor prior to the notice of intent to award.
 - 3. No attempt has been made or shall be made by the contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
- B. Each person signing a proposal certifies that (1 or 2, and 3):
 - 1. He or she is the person in the Contractor's organization responsible for verifying the prices being offered herein, that he/she has not participated, and shall not participate, in any action contrary to 2.19 (A) herein; or
 - 2. He or she is not the person in the Contractor's organization responsible for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision making in certifying that such persons have not participated and shall not participate in any action contrary to 2.20 (A) herein, and as the Contractor's agent, does hereby so certify; and he/she has not participated, and shall not participate, in any action contrary to 2.20 (A) herein;

and

3. The signatory of the submitted proposal, and any clarifications to that proposal, is an officer of the offering firm or a designated agent empowered to bind the firm in a contract.

2.28. Security of Data

- A. Access to Confidential Information. Some the Judicial Branch data files and documents are of a highly confidential nature; therefore, contractor's employees may be allowed access to this information only as needed for their duties relating to performance of the requirements of the contract. The contractor must have positive policies and procedures for safeguarding the confidentiality of such data, and may be liable under privacy legislation for negligent release of such information. The contractor shall be aware that access to data and application code will be provided only to the extent permitted by State and Federal statutes and regulations. Contractor, its employees, agents, and assigns are required to sign and abide by all confidentiality forms provided by the State. The contractor accepts sole responsibility for ensuring that all of its employees, agents, and assigns abide by these agreements.
- B. Background Investigation. The Contractor **must**, at the discretion of the State, facilitate the State's performance of criminal history, background investigation, and fingerprint checks of any individual utilized by the Contractor, whether officers, directors, shareholders, or partners and including managerial and supervisory personnel retained by the Contractor for the performance of the contract, to be conducted by the Iowa Department of Public Safety. Failure to satisfactorily pass these investigations may subject any and all employees, sub-contractors, agents, partners, or other relationships of the successful Contractor to removal from the project or any other appropriate action up to and including contract termination, at the discretion of the Director of Information Systems and Technology. The Contractor shall cause any and all waivers to be executed by the appropriate person to effectuate the investigation.

2.29. Toolsets

- A. The toolsets involved with the implementation of the requirements of this RFP **must** be included as a deliverable under a perpetual, royalty-free license for use by an unlimited number of the State's employees or its agents in performing EDMS related activities.

2.30. Milestone Payments

- A. The Judicial Branch's Project Manager will authorize payment upon acceptable performance and completion of payment milestones.

- B. The Judicial Branch will retain 15% of each milestone payment in accordance with section 5.3 of the attached contract and the entire final payment until the Judicial Branch has approved and accepted the solution.
- C. The Judicial Branch will determine specific payment milestones and criteria after identifying the successful Contractor. Examples of anticipated milestones include such things as: installation and configuration of the EDMS and modeling tools, training and knowledge transfer to appropriate state staff, executing performance and scalability testing, etc.

2.31. Warranty Period Required.

- A. The Judicial Branch requires a warranty period after the programming and implementation of the EDMS articulated in The Plan has been completed. This warranty period must continue for at least one year following the date the Judicial Branch accepts the product.

2.32. Miscellaneous

A. Conflicts Between Terms

- 1. The Judicial Branch reserves the right to accept or reject any exception taken by the Contractor to the terms and conditions of this RFP. Should the successful Contractor take exception to the terms and conditions required by the Judicial Branch, the successful Contractor's exceptions may be rejected and the State may elect to void the award of contract. The Judicial Branch may elect to negotiate with the successful Contractor regarding contract terms which do not materially alter the substantive requirements of the RFP or the contents of the Contractor's proposal.

B. News Release

- 1. News releases or other materials made available to the public, or to the Contractor's clients or potential clients pertaining to this procurement, or any part of the proposal shall not be made without the prior written approval of the State.

C. Selection of Venue and Choice of Forum

- 1. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this RFP and any resulting contract without regard to the choice of law provisions of Iowa law. Changes in applicable laws and rules may affect the award process or any resulting contract. Contractors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in

connection with this RFP or any resulting contract 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. 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 State.

- D. Right of Independent Procurement. The Judicial Branch reserves the right to purchase any hardware, software, and adapters independent of other services identified in the proposal.
- E. Participation in Meetings.
1. The Contractor must meet on a weekly basis, or more frequently as deemed necessary by the State, with the EDMS Business Advisory Committee or the State's project manager, or both.
 2. The Contractor must, as necessary, participate in meetings scheduled by the EDMS Business Advisory Committee and/or the State's project manager.
- F. Timely Information Required. Following award of the contract, if additional information is required, the Contractor **must** request it with sufficient lead-time as to not delay any part of the project schedule.
- G. Project Governance.
1. The Electronic Document Management System is under the direct control of the State Court Administrator. The State Court Administrator may delegate business related decisions and specific technology related tasks to the EDMS Business Advisory Committee and/or subject matter experts. Additionally, notwithstanding the scoring and evaluation provisions discussed elsewhere in this RFP, the final decision to award or not to award any contract pursuant to this RFP will be the responsibility of the State Court Administrator.
 2. The State Court Administrator shall assign a State Project Manager. Overall project management for the implementation of the services under this RFP will involve State staff.
 3. The assigned State's Project Manager will be responsible for the technical aspects of EDMS and shall report to the EDMS Business Advisory Committee.

4. The Contractor's project manager **must** report to, and take direction from, the State's Project Manager.

H. Substitution of Contractor Staff.

1. The Contractor's Project Principals shall not be substituted without prior written approval of the Judicial Branch's Project Manager. The State's project manager role may involve Judicial Branch staff, an independent Contractor currently under an existing contract with the State, or a combination of both.
2. Contractor's project managers and staff must not be substituted without prior written approval of the Judicial Branch's Project Manager.

CHAPTER 3 – MANDATORY REQUIREMENTS

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3.0. Chapter Purpose

- A. This Chapter identifies the mandatory requirements and conditions a proposal **must** fulfill before any consideration will be given. Each statement requires a positive response by providing or confirming, or both the information requested. Describe in detail how your proposal complies with each mandatory requirement. Proposals **must** meet the mandatory requirements detailed below.

3.1. Requisite Experience

- A. The Contractor **must** have successfully implemented a solution similar to that described in The Plan.
- B. Staff assigned by the Contractor **must** possess cumulative information system integration experience for developing a specific technological solution consistent with The Plan and defining appropriate strategies and processes necessary to implement EDMS for the Judicial Branch.
- C. The Contractor's Project Manager **must** be qualified to perform the tasks required and of a management level sufficient to assure timely responses from all Contractor personnel, the timely completion of tasks and the achievement of milestones.

3.2. Mandatory Technical Proposal Requirements

- A. Technical Requirements. The Contractor's Technical Proposal must articulate how its solution satisfies each of the following:
 - 1. The successful Contractor **must** deliver a technical environment necessary to implement EDMS statewide. This environment must be consistent with the technologies and strategies as defined in the Judicial Branch Business Plan.
 - 2. The technology **must** achieve the benefits of EDMS as expressed in the Judicial Branch Business Plan.
 - 3. The technology **must** leverage existing infrastructure and capability in the current Iowa technology environment as identified in the Judicial Branch Business Plan.
 - 4. The technology proposed **must** be focused on enhancing the business practices being utilized by legal practitioners in Iowa and should not be the driving force in the legal communities' business flow.

5. The technology **must** utilize the State's Iowa Communications Network (ICN) data circuits where allowable by statute. The vendor **must** review existing network for capacity for EDMS and if necessary provide recommendations to the Judicial Branch.
6. The technology **must** provide an electronic filing repository for lawyers and citizens to file documents with the Courts in Iowa.
7. The technology **must** provide for scanning of paper documents in the Clerk of Court's office. The method will be the exception provision in the event a document needs to be filed.
8. The technology **must** provide a document management environment for the storage and retrieval of documents within a court.
9. The technology **must** provide for workflow software to permit documents to be transferred to court business employees to perform necessary business processes.
10. The technology **must** provide for electronic storage of electronically stored court documents within our records management rules. The electronic storage of court records **shall** be on state owned servers. The electronic storage of court records **shall** be redundant with business continuity strategies in mind. The vendor **must** provide a SAN solution in our redundant data centers.
11. The technology **must** provide for acknowledgement of electronically received documents with an e-mail to the lawyer or citizen of receipt of the document. The technology **must** leverage the existing messaging/e-mail system of the Judicial Branch.
12. The technology **must** integrate with the existing case management system at the trial and appellate courts.
13. The solution **must** incorporate providing the documents on the existing Electronic Public Access in accordance with existing law and Court Rules. This is commonly referred to as Iowa Courts Online <http://www.iowacourts.state.ia.us/ESAWebApp/SelectFrame>
14. The technology **must** integrate with the existing citizen access to court dockets and financial records. The proposal **must** include adding documents for access through this web portal. This access **must** be based on the registration role with the case and based on security access.

15. The Electronic Filing solution **must** work with commonly used operating system I.E., Windows and Mac.
16. The Electronic Filing solution **must** work with commonly used Web browser I.E., Windows Internet Explorer, Fire Fox, Netscape, and Mac.
17. The EDMS system **must** be available on the Internet for electronic filing and acknowledgement of filings 24 hours a day and seven days a week.
18. The EDMS system **must** provide document integrity. The filed document **must** maintain its original content and the vendor must speak to how they can provide this level of document integrity.
19. The EDMS system **must** provide system security. The vendor **must** provide the detail of how to implement a security strategy to provide for the security of the system and its integrity.
20. The EDMS contractor **must** provide for the pushing of assigned court case to the judge's PC device using the network. The developed scripts **must** be able to detect when new filings assigned to a judge are available and push them to the judge's device. The developed script **must** be able to detect when an opinion is ready for filing and push the opinion to the case file and docket the event.
21. The EDMS contractor **must** provide training for the county pilot sites and Appellate Court site. This training will provide how to use electronic filing, how to use the document management application, how to use the workflow application and other uses developed. This **must** include lawyers, business users, judges, clerk of court staff, case schedulers, law clerks and juvenile court services.
22. The EDMS system **must** provide for electronic (e-mail) notification to the filer of receipt of the filing. The EDMS system **must** provide for electronic (e-mail) notification of events scheduled for documents filed by the Court.
23. The EDMS contractor **must** have reviewed and understood the Feasibility Study conducted by the Judicial Branch in 1999. This can be found at the following:

http://www.judicial.state.ia.us/Administration/Information_Technology/

24. The EDMS contractor **must** have reviewed and understood the NCSC Report of 2005. This can be found at the following:

http://www.judicial.state.ia.us/Administration/Information_Technology/

25. The EDMS contractor **must** have reviewed and understood the Proposed Rules for Electronic Filing. This can be found at:

http://www.judicial.state.ia.us/Supreme_Court/Orders/

26. Each Mandatory Technological Requirement defined in this RFP, including those defined in Section 3.2

B. Additional Technical Proposal Requirements

1. The proposal **must** provide for a user registration leveraging the existing registration strategies, yet providing for lawyers and citizens ease of access based on roles within the environment.
2. The proposal **must** provide for a user of electronic filing to have a login and password based on the role and involvement in the court system.
3. The proposal **must** provide for a web access for filers to access as an entry point for electronic filing.
4. The proposal **must** provide for a cover sheet, which requires certain information to be provided by the filer. The cover sheet must handle the data in an XML format for insertion in the Case Management System.
5. The proposal **must** provide for electronic data provided by agencies in state and local government who provide data for filing in a Global Justice XML Data Model (GJXDM) or National Information Exchange Model (NIEM) format. An example of this would be the electronic citation (electronic traffic tickets). This data interchange **must** be part of the electronic filing proposal.
6. The proposal **must** provide for multiple documents to be filed within one transaction.
7. The proposal **must** provide for a method of payment for filing. The methods must include credit cards and electronic check.
8. The proposal **must** provide for an electronic signature of the parties filing and the lawyer or citizen.

9. The proposal **must** provide for the electronic documents to be filed in a PDF format only.
10. The proposal **must** include a method for administration of registration. The administration **must** provide for the registration and de-registration of lawyers and citizens.
11. The proposal **must** provide for an electronic file stamp of documents electronically filed.
12. The proposal **must** provide for docket entries to be posted when provided within the business rules of the Court.
13. The proposal **must** provide for a method of posting notice to electronic filers if the web access is unavailable.
14. The proposal **must** include the ability to hyperlink documents filed with the court and to hyperlink to other databases. An example of other databases would be a legal case site linked to Westlaw.
15. The proposal **must** include security with a document and within a document. The proposal **must** include the ability to seal the entire document, to seal a paragraph within a document, or to seal a word or series of numbers within a document.
16. The proposal **must** include the ability to intervene or become a party to a case which is confidential.
17. The proposal **must** include the ability for the Clerk of Court to certify records filed with the Court.
18. The proposal **must** provide the ability for the Clerk of Court to provide subpoenas in either an electronic or paper form.
19. The proposal **must** provide for the ability for Court Reporters to file steno notes of court proceedings in an electronic storage strategy.
20. The proposal **must** provide for the Orders of the Judge to be filed electronically.
21. The proposal **must** provide a strategy for the Judges to access the network and download and upload new documents.
22. The proposal **must** disclose the operating environments required for the proposed implementation EDMS.
23. The proposal **must** not be technologically inconsistent with the recommendations contained in The Plan.

24. The proposal **must** include the specifications of the proposed hardware, software and adapters necessary to implement EDMS in Iowa. In fulfilling this requirement, the Contractor **must** indicate in which items it proposes to provide under the contract and which items it expects the State will have or procure separately from the awarded contract.
25. The proposal **must** separately describe the methodology, development tools, or procedures which will be used to facilitate the State's implementation of the technology.

3.3. Mandatory Technological Requirements

A. Requirements for implementing EDMS.

1. The proposed workflow software **must** provide the functionality of workflow in accordance with the business rules of each court process. The Judicial Branch will provide the business rules for each business process.
2. The proposal **must** provide the plan/strategy for developing the workflow software deliverables using the roles individuals take part with in the Judicial Branch and associated business organizations. The State of Iowa **must** own the code for the routing of this deliverable.
3. The proposed document management software **must** provide the functionality of access and control of documents filed with the court.
4. The proposed technology **must** provide for secure access to transactions over the internet.

B. Implementation Requirements

1. The proposal **must** include building, implementing and acceptance testing involving electronic filing and EDMS:
 - (a) Providing the plan for implementation of each of the components of electronic filing and EDMS.
 - (b) Provide a 90 day pilot test of electronic filing and EDMS in two courts in Iowa.
 - (c) Provide a 90 day pilot test of electronic filing and EDMS in the Appellate Court.
 - (d) Provide resolution to identified issues during the pilot test in the three locations.

- (e) Providing the knowledge transfer to the court assigned resources.
- (f) Providing a training methodology for the use of EDMS for court users.
- (g) Providing an operational support plan for the continuation of EDMS within the Judicial Branch.

C. Data Standards and Requirements

1. The proposed technology **must** utilize XML
2. The proposed technology must utilize GJXDM or NIEM for electronic data exchange.
3. The proposed technology must provide for document integrity.
4. The EDMS system **must** follow the Court National Standard of Electronic Court Filing (ECF) 1.2 and 1.1 specifications. This can be found at the following:

http://www.ncsconline.org/D_Tech/standards/

[scroll to the bottom of the page; the PDF file can be found under the heading “Electronic Filing Processes (Technical & Business Approaches)”]

D. Architecture & Technology Requirements

1. The proposed architecture **must** flexibly adapt to, integrate and utilize ever-evolving policies, best practices, and operating procedures from EDMS integration participants.
2. The proposed architecture **must** achieve EDMS integration via web based technologies that at a minimum include the following architectural components:
 - (a) document storage
 - (b) scanning
 - (c) web services
 - (d) data access and control
 - (e) security
 - (f) confidentiality

- (g) management and control; and
 - (h) networking.
3. While this RFP represents the first phase of the State's EDMS project, the proposed solution **must** have the potential to be scaled in the future such that additional resources could be acquired and attached to the system easily, allowing other agencies to participate. Options for horizontal and vertical scalability are encouraged with the intent that at a future time, the proposed solution may be expanded to function with a broader range of users.
 4. The proposed architecture **must** be scalable and must provide a minimum of 99.99% EDMS server's availability. EDMS server's availability is defined as the availability of the operating system and server hardware used to support the EDMS excluding factors outside the control of the proposed solution such as facilities and/or internet service provider outages. Options and recommendations for measuring and reporting on availability as defined are encouraged. A factor to consider in architecture design includes the availability of a primary data center with secondary, geographically remote site for disaster recovery and business continuity.
 5. The proposed architecture **must** include separate development, test, and production environments.

E. Management, Access and Control

1. The proposed solution **must** be widely compatible with existing applications and operating environments.
2. The proposed solution **must** support access and control for information exchange.
3. The proposed solution **must** ensure that user identification and authentication can take place at the network, device, application, and/or device/software level. At a minimum, a user shall be restricted from establishing a secure data exchange without first being identified/authenticated by no less than a user id and password.
4. The security included in the proposed solution **must** be scalable and capable of being configured to accommodate different levels of security on a per user, per application, or per endpoint basis.

F. Security

1. Encryption requirements

- (a) The proposed solution **must** ensure the Judicial Branch network data crossing over a public network segment or over dial-up or Internet connections includes at least 128 bit encryption utilizing FIPS 140-2 compliant modules. Public networks being defined as any network equipment or data transmission line that is NOT in direct control of the law enforcement of the state.
 - (b) The proposed solution **must** incorporate secure data exchange mechanisms and technologies such as cryptography, key management, access control, authentication, and data integrity where appropriate.
 - (c) The proposed solution **must** conform to Internet Engineering Task Force (IETF) Internet Protocol Security (IPSEC) Encapsulating Security Payload (ESP) protocol as specified in RFC 2406. The solution **must** be capable of utilizing cryptographic modules that are compliant with Federal Information Processing System (FIPS).
 - (d) The proposed solution **must** recognize the security policies and requirements of the Judicial Branch.
 - (e) The proposed solution **must** require a minimum of 128 encryption with NIST, CSL certification of the cryptographic module to ensure it meets FIPS Publication 140-2 for “Security Requirements for Cryptographic Modules.” Systems that transmit data over radio frequencies to a network with access to EDMS data must also be subject to this encryption requirement.
- 2. The proposed solution **must** utilize credentials and authentication.
 - 3. The contractor is invited to *propose* implementation of a particular web services security standard, but the Contractor **must** clearly articulate the standard, which components of the standard will be implemented, and how each component fulfils a technological or business requirement of this RFP or The Plan.

G. Network Requirements

- 1. The proposed solution **must** be capable of utilizing the State’s existing infrastructure to establish a framework for EDMS information sharing making use of the Iowa Communications

Network data circuits where feasible and the public internet where appropriate.

2. The proposed solution **must** be capable of utilizing “Data Transfer Facilities”.
3. The solution **must** be capable of transferring large data sets.

3.4. Mandatory Non-technological Requirements

A. Software Toolsets.

1. The Technical Proposal **must** specifically identify the tools to be used and delivered and specify the hardware and software requirements for operating the tool and should specify what support will be provided to users of the toolsets.
2. The Cost Proposal **must** specifically delimit any separate cost associated with the tool sets, whether initial costs or maintenance costs. If the toolsets are to be provided without additional cost, the Cost Proposal must so state.

B. The Technical Proposal and Cost Proposal **must** indicate whether the Contractor or Contractors seek an award (1) for implementing an EDMS Platform, (2) for implementing the required integration, (3) for implementing a suitable adapter framework, or some combination of the three. If a proposal covers more than one category, the costs associated for each of these three categories **must** be separately and clearly identified in the Cost Proposal.

C. Additional Requirements Directed to the Technical Proposal

1. Qualifications and Experience Required of the Contractor firm
 - (a) The Contractor **must** provide basic corporate and sub-contractor information to include, but not be limited to, ownership, size, relationship with larger owner, financial resources, date of incorporation, and staffing locations.
 - (b) At least three (3) references (with project name and location, contact person with telephone and FAX numbers and email address) must be included in the proposal. Sub-contractors and their experience must be included.

2. Requirements for Project Principals
- (a) The Contractor's proposed Project Principals **must** be identified in the proposal.
 - (b) Proposals must include resumes for the Contractor's Project Principals and **must**, at a minimum, include the following:
 - (i) Academic background and degrees.
 - (ii) Professional certifications.
 - (iii) Previous participation and experience in an EDMS implementation and associated aspects, if any.
 - (iv) Previous management of an EDMS technology development, if any.
 - (v) Previous experience with management of sub-contractor staff.
 - (vi) At least three (3) business/professional references to include: names of contacts, titles, addresses, telephone and email address.
3. Requirements for Contractor Staff
- (a) The Project Manager and staff **must** be identified in the proposal.
 - (b) Proposals **must** include resumes for the contractor's Project Manager and Staff, and **must**, at a minimum, include the following
 - (i) Academic background and degrees.
 - (ii) Professional certifications.
 - (iii) Previous participation and experience in system integration and associated aspects, if any.
 - (iv) Project management experience and/or associated responsibilities related to technology development, if any.
 - (v) Previous experience with management of sub-contractor staff, if any.

- (vi) At least three (3) business/professional references to include: names of contacts, titles, addresses, telephone and email addresses.

4. Work Plan

- (a) The Contractor's Technical Proposal **must** include a detailed Work Plan explaining how the Contractor intends to complete and obtain acceptance of their proposed technology and the requirements of this RFP. The Work Plan **must** include, but is not limited to:

- (i) A statement of project understanding affirming:

- [1] Comprehension and compliance with the Project Description identified in Section 1.1 and each provision of the RFP.

- [2] Awareness of the State's requirements and intended use of the services and technology as set forth in the RFP.

- [3] That the deliverables shall satisfy the RFP requirements in all respects and be fit for such intended uses.

- (ii) A detailed schedule based on the number of days and/or weeks required for completing the work necessary for the pilot counties must be submitted to the EDMS Business Activity Committee not later than August 24, 2007.

- (b) The EDMS Business Activity committee targets December 3, 2007 as the beginning of the first pilot county for EDMS.

- (i) A detailed breakdown of the proposed work structure, including activities, tasks, performance review, payment milestones/criteria, and objectives to provide the services and deliverables required to complete the technology environment Plan and obtaining the EDMS Business Advisory Committee's acceptance.

- (ii) Identification of task relationships, overlap, and dependencies.

- (iii) A detailed breakdown of staff resources assigned to

the project, including number of staff and the percentage of time for each.

- (iv) A detailed responsibility matrix for Contractor and State staff.
 - (v) Start and ending dates for each task.
 - (vi) Articulation of the approach to coordinating the responsibilities of the State staff with those of the Contractor/sub-contractor to ensure overall project success.
 - (vii) 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.
 - (viii) A Project Change Control Plan for controlling the project and prioritizing State and Contractor change requests.
5. The Technical Proposal **must** include an Acceptance Plan for obtaining State's acceptance of each deliverable.
 6. The Technical Proposal **must** include the format of and an example of the Status Report to be used throughout the project.

D. Requirements Specifically Directed to the Cost Proposal

1. The proposal **must** include the separate cost of implementing each of the EDMS.
2. 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.
3. The Cost Proposal **must** include an annualized breakdown of the total cost of ownership (TCO) projected forward five (5) years from the date the contract is awarded. The breakdown must list separately, at a minimum, new costs, recurring costs, and maintenance costs.
4. The proposal **must** include the specifications of the proposed hardware, software and adapters necessary to implement EDMS in Iowa. The Contractor **must** indicate in this section which items it proposed to provide under the contract and which items it expects the State will have or procure separately from the awarded contract. The State reserves the right to purchase any hardware, software, and

adapters independent of other services identified in the proposal.

5. Cost Estimates

- (a) The Contractor **must** provide specific estimated costs for the State to implement each proposed phase of the integration implementation schedule identified in the Contractor's Work Plan, broken down by the architectural solutions recommended.
- (b) Cost estimates **must** include separate headings for, at a minimum
 - (i) hardware procurement
 - (ii) hardware maintenance
 - (iii) operating system procurement
 - (iv) operating system maintenance
 - (v) EDMS software procurement
 - (vi) EDMS software maintenance
 - (vii) maintenance; and
 - (viii) any additional headings deemed appropriate.
- (c) Cost estimates **must** also include the cost of implementing all EDMS.
 - (i) These costs **must** be broken down by individual exchange.
 - (ii) Cost estimates **must** also identify the cost associated with maintaining the exchanges once they are implemented.

**CHAPTER 4 – PROPOSAL FORMAT AND EVALUATION
CRITERIA**

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4.0. Chapter Purpose

- A. The purpose of this Chapter is to provide detailed instructions regarding what papers should be included in the Technical and Cost proposals and in what order those documents should be placed.

4.1. Instructions

- A. The contents of the proposal shall be as defined in paragraph 4.2. Failure to adhere to these instructions shall cause rejection of the Contractor's proposal.
- B. The proposal shall be packaged and delivered as described in this RFP.

4.2. Proposal Contents

- A. Costs Evaluated Separately. All Cost Proposals will remain unopened and separated from the Technical Proposals until the committee has completed its evaluation of the Technical Proposals. **No pricing information shall be included in the Technical Proposal. All pricing information shall appear only in the separately sealed Cost Proposal.**
- B. Technical Proposal. The technical proposal must include, at a minimum, the following items in the order below.
 1. Cover or Title Page including RFP Reference Number, appropriately marked whether it is the Original, a Duplicate, or a "Public Copy".
 2. Letter of Transmittal.
 - (a) The Contractor's letter of transmittal must be signed by an officer with the authority to bind the Contractor to providing the services proposed.
 3. Table of Contents
 4. Executive Summary
 5. Administrative, Contractual, Service Requirements and Contractor Information
 6. Statement of Understanding.
 - (a) The prospective Contractor shall provide a positive statement with respect to Chapter 2 of the RFP by stating that the prospective Contractor has read, understands and

will comply with the contents.

- (b) Failure to provide a statement will be deemed acceptance by the prospective Contractor of the terms and conditions as stated.
- (c) The prospective Contractor may take exception to the terms and conditions as required by the State; however, the prospective Contractor's exceptions may be rejected and the entire proposal deemed non-responsive.
- (d) The State may elect to negotiate with the successful Contractor(s) regarding contractual terms and conditions which do not materially alter the substantive requirements of the proposal or the prospective Contractor's response to the RFP.

7. Acceptance of Terms and Conditions.

- (a) The Contractor shall specifically agree that the proposal is predicated upon the acceptance of all terms and conditions stated in the RFP, including the terms and conditions contained in the attachments, except attachments 5 and 6.
- (b) However, the Contractor shall agree that the contents of attachments 5 and 6 will be negotiated prior to contract execution. Attachments 5 and 6 will provide the starting point for negotiations.
- (c) If the Contractor objects to any term or condition, the Contractor must specifically refer to the RFP or attachment page, and section. Objections or responses that materially alter the RFP may be deemed non-responsive and disqualify the Contractor.

8. Technical Requirements Understanding. The Contractor shall provide the information requested and/or a positive statement of compliance with respect to each subsection of Chapter 3.

9. Signed Attachments 1 through 4.

10. A soft copy of the Technical Proposal on a separate CD included with each copy of the Proposal.

C. Cost Proposal. Cost Proposals shall not be marked confidential. The separately sealed Cost Proposal shall consist of the following documents and responses:

1. Cover or Title Page including RFP Reference Number, appropriately marked whether it is the Original, a Duplicate, or a "Public Copy".
2. Letter of Transmittal.
 - (a) The Contractor's letter of transmittal must be signed by an officer with the authority to bind the Contractor to providing the services proposed.
3. Table of Contents
4. Letter Binding Prospective Contractor to Proposed Costs. The prospective Contractor shall include a letter binding the prospective Contractor to its proposed Costs by providing a statement that the costs quoted will be binding and unchangeable for a period of not less than 120 days from the due date of the proposal.
5. Certification of Independent Price Determination as required by section 2.27 of this RFP.
6. The Cost Proposal, following the format specified in Attachments 8 and 9.
7. A soft copy of the Cost Proposal on a separate CD included with each copy of the proposal.

4.3. Evaluation Process

- A. The Issuing Officer shall receive all Technical and Cost Proposals by the designated time. All Cost Proposals will remain unopened and separated from the Technical Proposals until the committee has completed its evaluation of the Technical Proposals.
- B. The State will review Technical Proposals and unopened Cost Proposals for any issue identified in section 2.5 (rejection of proposals section).
- C. Remaining Proposals will be further evaluated based on scoring criteria established and distributed to the State's Evaluation Committee prior to the deadline for submitting proposals. The scoring criteria will be posted on the Judicial Branch website after the deadline for submitting proposals has passed.
- D. Notice will be posted in conformance with the relevant sections of Chapter 2 of this RFP.

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**ATTACHMENT 3 – CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—
LOWER TIER COVERED TRANSACTIONS**

SIGN AND SUBMIT THIS CERTIFICATION WITH TECHNICAL PROPOSAL.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED
TRANSACTIONS**

By signing and submitting this Proposal in response to RFP No. JB041707, the Contractor is providing the certification set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government the Judicial Branch or State with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The Contractor shall provide immediate written notice to the person to which this Proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
4. The Contractor agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Judicial Branch or State with which this transaction originated.
5. The Contractor further agrees by submitting this Proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for

debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the Judicial Branch or State with which this transaction originated may pursue available remedies, including suspension and/or debarment.

- (1) The Contractor certifies, by submission of this Proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal Judicial Branch or State.
- (2) Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this Proposal.

Signature:

Date:

Printed Name and Title

Name of Contractor Organization

ATTACHMENT 4 – AUTHORIZATION TO RELEASE INFORMATION

PROSPECTIVE CONTRACTORS – SIGN AND SUBMIT CERTIFICATION WITH TECHNICAL PROPOSAL.

AUTHORIZATION TO RELEASE INFORMATION

_____ (Name of Contractor) hereby authorizes any person or entity, public or private, having any information concerning the Contractor’s background, including but not limited to its performance history regarding its prior rendering of services similar to those detailed in RFP No. JB041707, to release such information to the Judicial Branch.

The Contractor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Contractor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the Judicial Branch or may otherwise hurt its reputation or operations.

The Contractor is willing to take that risk. The Contractor agrees to release all persons, entities, the Judicial Branch, and the State of Iowa from any liability whatsoever that may be incurred in releasing this information or using this information.

Printed Name of Contractor Organization

Signature of Authorized Representative

Date

Printed Name and Title

ATTACHMENT 5 – SAMPLE SERVICES CONTRACT

SAMPLE SERVICES CONTRACT

This Agreement for professional services and other deliverables (this “Agreement”), made and effective as of December , 2006(“Effective Date”), by and between the State of Iowa, acting by and through the Judicial Branch 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 Electronic Document Management System for the Judicial Branch and the State of Iowa (the “State”), as more fully described in this Agreement, including RFP No. JB041707 and the Statement of Work..

1.2 Term. The initial term of this Agreement is from December , 2006, through December , 2009, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the Judicial Branch shall have the option to extend/renew this Agreement for up to three additional one-year renewal terms. The decision to extend the Agreement will be at the sole option of the Judicial Branch and may be exercised by the Judicial Branch by providing written notice to Vendor.

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:

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

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

“Acceptance Tests” or “Acceptance Testing” mean the tests, reviews and other activities that are performed by or on behalf of Judicial Branch to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Judicial Branch, as determined by the Judicial Branch 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.

“Authorized Contractors” means independent contractors, consultants or other Third Parties who are retained or hired by the State, the Judicial Branch or any other Governmental Entity of the State to use, maintain, support, modify, or enhance the EDMS or the Judicial Branch system or to otherwise assist Judicial Branch with its use of the EDMS or the Judicial Branch system for other purposes.

“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 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.

“Deliverables” mean the EDMS, 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.

“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.

“Enhancements” shall mean 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.

“Electronic Document Management System” or **“EDMS”** means

_____. Further, an EDMS must include Quality-of-Service (QoS) and Operational Management features.

“Governmental Entity” shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4) (2005), or any successor provision to that section. The term Governmental Entity shall also include agencies, independent agencies, Judicial Branch, 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.

“Project” means the project to develop and implement the EDMS and specified information exchanges and all services and Deliverables to be performed and provided by Vendor as described in this Agreement.

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

“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.

“Software” means the [describe specific software products] and all other software, programs, applications 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.]

“Software License Agreement” means the Software License Agreement by and between Vendor and the Judicial Branch dated _____.

“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).

2.15 “Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in 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. Specifications shall include, without limitation, the existing and planned data model for the EDMS, including all data elements, logical relationships and an entity relationship diagram, the functional requirements specifications and a functional design for the EDMS, including descriptions of each EDMS function and a functional hierarchy diagram, a definition of the existing and planned EDMS modules, including a diagram showing the system design, interface design document including descriptions of all internal and external interfaces, final specifications of the EDMS architecture, including hardware, software and operating system for all system components and interfaces, the detailed EDMS security

plan, detailed business and technical requirements, detailed system planning & design, functional hierarchy diagram, entity relationship diagram, data conversion and migration protocols, Software and hardware configuration plan, and duplicate voter check plan.] The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

“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 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.

“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.

“Third Party Software” means 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 Judicial Branch’s Request for Proposal No. JB041707 for the Judicial Branch EDMS (“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 and sample Software License Agreement 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 and sample Software License Agreement attached to the RFP Proposal shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or the Judicial Branch 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 Judicial Branch 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 Judicial Branch.

Section 4. Scope of Work.

4.1 Statement of Work. Vendor shall provide the Judicial Branch 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 Judicial Branch all Deliverables, including Source Code, as set forth in Schedule A. Vendor shall provide all such Deliverables in both hard copy and electronic format (acceptable to the Judicial Branch) 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.

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

4.6 Hardware. Vendor shall recommend to the Judicial Branch all Third Party hardware necessary or desirable to be acquired to complete work and provide the Deliverables under this Agreement. At the Judicial Branch's sole discretion, the Judicial Branch will procure such Third Party hardware directly or require Vendor to procure or make available the Third Party hardware for the Judicial Branch upon such terms and conditions as are acceptable to the Judicial Branch. 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 Judicial Branch: 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 Judicial Branch'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 Judicial Branch all Third Party Software necessary or desirable to be acquired to complete work and provide all Deliverables under this Agreement. At the Judicial Branch's sole discretion, the Judicial Branch will license such Third Party Software directly or require Vendor to license or sublicense the Third Party Software to or on behalf of the Judicial Branch at the Judicial Branch'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 Judicial Branch pursuant to a license agreement, the terms and conditions of which must be acceptable to the Judicial Branch.

4.8 Manufacturers' Warranties. Vendor shall take all action necessary to ensure that the State and the Judicial Branch shall be entitled to receive and enjoy all warranties, indemnities and other benefits associated with Third Party Software and Third Party hardware. At the Judicial Branch's request, Vendor

shall assign to the State and the Judicial Branch 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 Judicial Branch 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 Judicial Branch 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 \$_____. Vendor is not entitled to payment for any Deliverable provided under this Agreement if the Judicial Branch reasonably determines that such Deliverable has not been satisfactorily or completely delivered or performed, or that such Deliverable fails to meet or conform to any applicable Specifications or that there is a material Deficiency with respect to such Deliverable. In no event shall the Judicial Branch be obligated to pay Vendor any fees, costs, compensation or other amounts in excess of the amount specified in a Statement of Work for any one or more Deliverables, unless the Judicial Branch otherwise agrees to pay such fees, costs, compensation other amounts pursuant to a written Change Order or an amendment to this Agreement executed by the Judicial Branch. 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 Judicial Branch 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 Judicial Branch or the State. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement.

5.2 Invoices. Upon receipt of written notice of Acceptance from the Judicial Branch with respect to one or more Deliverables, Vendor shall submit an invoice to the Judicial Branch 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 Judicial Branch. The Judicial Branch 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 Judicial Branch 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 Judicial Branch shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Judicial Branch believes the invoice is inaccurate or incorrect in any way.

5.3 Retention. To secure Vendor's performance under this Agreement, the Judicial Branch shall retain 15% of the fees or other compensation associated with each Deliverable and payable hereunder (the "Retained Amounts"). The Retained Amounts shall be payable upon the Judicial Branch'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 Judicial Branch the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the Judicial Branch of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Judicial Branch under this section 5.4, the Judicial Branch 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 Judicial Branch may, in its sole discretion, elect to have Vendor apply any amounts due to the Judicial Branch under this Section 5.4 against any amounts payable by the Judicial Branch 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 Judicial Branch or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Judicial Branch may set off such sum against any sum invoiced to the Judicial Branch by Vendor in the Judicial Branch's sole discretion unless otherwise required by law. Any amounts due to the Judicial Branch as damages may be deducted by the Judicial Branch from any money or sum payable by the Judicial Branch to Vendor pursuant to this Agreement or any other agreement between Vendor and the Judicial Branch.

5.7 Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Judicial Branch may withhold compensation or payments to Vendor, in whole or in part, without penalty to the Judicial Branch or work stoppage by Vendor, in the event the Judicial Branch 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 Judicial Branch under this Agreement.

5.8 Correction/Cure. The Judicial Branch 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 Judicial Branch. The Judicial Branch may provide or procure the services reasonably necessary to correct any Deficiencies or cure any Vendor default, in which event Vendor shall reimburse the Judicial Branch for the actual costs incurred by the Judicial Branch for such services (or for the reasonable value of the time expended by any Judicial Branch or State employees who provide such services). In addition, Vendor shall cooperate with the Judicial Branch or any Third Parties retained by the Judicial Branch 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 Judicial Branch to Vendor during the term of this Agreement that notifies Vendor that the EDMS or any Deliverable delivered by Vendor (and previously accepted by the Judicial Branch) contains or experiences a Deficiency, Vendor shall, at no cost to the Judicial Branch, promptly (a) correct the Deficiency and repair the affected Deliverable, and (b) provide the Judicial Branch 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 Judicial Branch and related Documentation.

5.10 Monitoring and Review. The Judicial Branch shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring shall include the Judicial Branch'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 Judicial Branch'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 Judicial Branch certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Judicial Branch 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 Judicial Branch. At the Judicial Branch's request, Vendor shall assist the Judicial Branch in performing Acceptance Tests at no additional cost to the Judicial Branch. Within a reasonable period of time after the Judicial Branch has completed its Acceptance Testing, the Judicial Branch 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 Judicial Branch determines that a Deliverable satisfies its Acceptance Tests, the Judicial Branch shall provide Vendor with notice of Acceptance with respect to such Deliverable. If the Judicial Branch determines that a Deliverable fails to satisfy its Acceptance Tests, the Judicial Branch shall provide Vendor with notice of Non-acceptance with respect to such Deliverable. In the event the Judicial Branch provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to the Judicial Branch within ten (10) days of Vendor's receipt of notice of Non-acceptance so that the Judicial Branch may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Judicial Branch 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 Judicial Branch 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 Judicial Branch 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 Judicial Branch's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Judicial Branch 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 Judicial Branch 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 Judicial Branch'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 Judicial Branch's satisfaction and the Judicial Branch has provided Vendor with written notice of Final Acceptance. If the Judicial Branch determines that all

Deliverables satisfy its Acceptance Tests, the Judicial Branch 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 Judicial Branch'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 Judicial Branch 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 Judicial Branch 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 Judicial Branch'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 Judicial Branch) during the business day to inquiries from the Judicial Branch.

6.3.2 Review Meetings. Commencing with performance of this Agreement, Vendor's Project Manager shall meet weekly with the Judicial Branch'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 Judicial Branch 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 Judicial Branch may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Judicial Branch's approval.

6.3.4 Problem Reporting Omissions. The Judicial Branch'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 Judicial Branch may have. The Judicial Branch'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 Judicial Branch 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 Judicial Branch 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 Judicial Branch 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 Judicial Branch'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. Modifications to the Statement of Work that incorporate additional detail with respect to any Deliverable will not have the effect of increasing the not-to-exceed cost of that Deliverable, unless Vendor can show by clear and convincing evidence to the Judicial Branch that the process of gathering detailed requirements for the EDMS revealed information previously unknown to the Vendor, that such new information will cause the estimated time, and therefore cost, necessary to complete a particular Deliverable to increase, and that the incorporation of that information alone into the EDMS requirements is the sole cause of the additional time and cost.

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 Judicial Branch considers [name project manager, developers 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 Judicial Branch 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 Judicial Branch's written consent. In the event Vendor requests the Judicial Branch to consent to a removal, reassignment, transfer or other replacement of any Key Personnel, the Judicial Branch 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 Judicial Branch, and the Judicial Branch 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 Judicial Branch shall thereafter be deemed Key Personnel for purposes of this

Agreement. If at any time during the term of this Agreement, the Judicial Branch becomes dissatisfied with the performance of any individual who is part of Vendor's personnel, the Judicial Branch 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 Judicial Branch on the corrective action Vendor believes is appropriate to address the Judicial Branch'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.

Vendor acknowledges and agrees that any breach by Vendor of this Section 6.4 will delay and disrupt the Project and the Judicial Branch's operations and will result in significant loss, expense and damages to the Judicial Branch and the State. Furthermore, Vendor acknowledges and agrees that it may be extremely impractical and difficult to determine actual damages that the Judicial Branch or the State may sustain as a result thereof. Accordingly, Vendor agrees to pay as liquidated damages \$___ a day for each and every day or portion thereof that Vendor removes, reassigns or substitutes a person identified in Section 6.4 in violation of that section.

The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the Judicial Branch may have for Vendor's breach of this Agreement, including the Judicial Branch's right to terminate this Agreement. The assessment of liquidated damages shall be in addition to and not in lieu of such other remedies as may be available to the Judicial Branch. It is expressly agreed that the waiver of any liquidated damages due the Judicial Branch shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Any failure by the Judicial Branch to demand liquidated damages within any period of time shall not constitute a waiver of such claim by the Judicial Branch.

Amounts due the Judicial Branch as liquidated damages may be deducted by the Judicial Branch from any fees or other compensation payable to Vendor under this Agreement, or the Judicial Branch may bill Vendor as a separate item therefore or otherwise request in writing Vendor's payment of liquidated damages assessed by the Judicial Branch. Vendor shall promptly pay the Judicial Branch any assessed liquidated damages, but in no event later than fifteen (15) days after the date of the Judicial Branch's assessment or other written request for liquidated damages. At the Judicial Branch's option, the Judicial Branch may obtain payment of assessed liquidated damages through one (1) or more claims upon any performance bond furnished by Vendor.

6.5 Security Regulation; Cooperation. Vendor and Vendor's personnel shall comply with the Judicial Branch's and the State's security regulations including any procedure which the Judicial Branch's personnel, contractors and consultants are normally asked to follow. Vendor agrees to cooperate fully and to provide any assistance necessary to the Judicial Branch 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 [] or [Vendor-Owned Deliverables]. Vendor shall retain all right, title, and interest in and to [describe any specific Deliverables that 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 ("Vendor-Owned Deliverables").

[7.2 License to the [Vendor-Owned Deliverables/Software]. Upon [the Judicial Branch providing Vendor with written notice of Acceptance of the Software/Vendor-Owned Deliverables], Vendor shall grant to the Judicial Branch 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, reproduce and modify the [Software/Vendor-Owned Deliverables] and such other rights, licenses and privileges as are more fully described in the [Software License Agreement.]

7.3 Ownership and Assignment of Other Deliverables. Vendor agrees that the State and the Judicial Branch shall become the sole and exclusive owners of all Deliverables, excluding Vendor-Owned Deliverables. Vendor hereby irrevocably assigns, transfers and conveys to the State and the Judicial Branch all right, title and interest in and to all Deliverables, excluding Vendor-Owned Deliverables, 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”). Vendor represents and warrants that the State and the Judicial Branch 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 Judicial Branch and the payment of such royalties or other compensation as the Judicial Branch deems appropriate. Immediately upon the request of the Judicial Branch, Vendor will deliver to the Judicial Branch or destroy, or both, at the Judicial Branch’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 Judicial Branch’s rights in and to the State-Owned Deliverables.

7.5 Acknowledgement. Vendor acknowledges and agrees that the State and the Judicial Branch, 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 Judicial Branch 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 Judicial Branch’s request, Vendor will (both during and after the termination or expiration of this Agreement) execute and deliver such instruments, provide all facts known to it, and take such other action as may be requested by the Judicial Branch to: (i) establish, perfect or protect the State’s and the Judicial Branch’s rights in and to the State-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 7.1, and (ii) obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. In the event the Judicial Branch 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 Judicial Branch, 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 Disputes. In any dispute over ownership or licensing rights, Vendor shall have the burden of proving prior or independently developed rights by clear and convincing proof.

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 Judicial Branch provides Vendor with 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 within ten (10) days of receiving notice of such Deficiencies or failures from the Judicial Branch. In the event Vendor is unable to repair, correct or replace such Deliverable to the Judicial Branch'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 Judicial Branch shall be entitled to pursue any other available contractual, legal or equitable remedies. Vendor shall be available at all reasonable times to assist the Judicial Branch with questions, problems and concerns about the Deliverables, to inform the Judicial Branch 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 Judicial Branch, and provide the Judicial Branch 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 Judicial Branch'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 Third-Party Software, 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 Judicial Branch hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Judicial Branch 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 Judicial Branch herein and in the Software License Agreement; and (iv) the Judicial Branch 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 therein and related thereto); and (ii) the Judicial Branch's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action

that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform the Judicial Branch 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 Judicial Branch's request and at the Vendor's sole expense: (i) procure for the Judicial Branch 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 Judicial Branch all fees, charges and any other amounts paid by the Judicial Branch 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 Judicial Branch 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 Judicial Branch 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 Judicial Branch, 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 Judicial Branch notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to the Judicial Branch, 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 Judicial Branch 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.

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 Iowa Judicial Branch.

8.10 Vendor covenants that it will comply with and adhere to all Judicial Branch 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 Judicial Branch'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 Judicial Branch, 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 Judicial Branch to use, modify and maintain such Deliverable(s) and the EDMS 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 Judicial Branch.

Section 9. Indemnification.

9.1 Vendor and its successors and permitted assigns shall defend, protect, indemnify and hold harmless the Judicial Branch, 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) directly or indirectly related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:

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 misleading; 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 Judicial Branch or any other Indemnitee.

9.3 The Judicial Branch will reasonably cooperate with Vendor to facilitate the defense of any action defended by Vendor. The Judicial Branch 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 Judicial Branch. The Judicial Branch 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 Judicial Branch's notice of breach or any subsequent notice or correspondence delivered by the Judicial Branch 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 Judicial Branch 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 materially incorrect or incomplete;

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 Judicial Branch determines or believes the Vendor has engaged in conduct that has or may expose the Judicial Branch 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 Judicial Branch's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Judicial Branch, and the Judicial Branch 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 Judicial Branch 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 Judicial Branch 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 Judicial Branch to appropriate funds sufficient to allow the Judicial Branch 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 are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Judicial Branch to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Judicial Branch in its sole discretion; or

10.3.3 If the Judicial Branch'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 Judicial Branch'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 Judicial Branch's ability to fulfill any of its obligations under this Agreement or the operation of the EDMS.

The Judicial Branch 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 Judicial Branch pursuant to Section 10.1), the Judicial Branch shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the Judicial Branch up to and including the date of termination of this Agreement and for which the Judicial Branch is obligated to pay pursuant to this Agreement; provided however, that in the event the Judicial Branch terminates this Agreement pursuant to Section 10.3, the Judicial Branch's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to the Judicial Branch and shall not be construed to require the Judicial Branch to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the Judicial Branch in accordance with the terms of this Agreement. The Judicial Branch 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, including amounts associated with 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 and upon request of the Judicial Branch, 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 Judicial Branch may require.

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

10.5.3 Cooperate in good faith with the Judicial Branch 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 Judicial Branch any payments made by the Judicial Branch for services or Deliverables that were not rendered or provided by Vendor.

10.5.5 Immediately deliver to the Judicial Branch any and all Deliverables (including State-Owned Deliverables, Source Code, object code, Software, and Documentation) for which the Judicial Branch 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 of the breach by the Judicial Branch of any material term, condition or provision of this

Agreement, if such breach is not cured within sixty (60) days of the Judicial Branch’s receipt of Vendor’s written notice of breach.

Section 11. Insurance.

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 Judicial Branch, 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 Judicial Branch; (ii) remain in full force and effect for the entire term of this Agreement; and (iii) not be canceled, reduced or changed without the Judicial Branch’s prior written consent. The State of Iowa and the Iowa Judicial Branch shall be named as additional insured 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 Iowa Judicial Branch are named as additional insured, and that the coverage afforded to the State of Iowa and the Iowa Judicial Branch under this policy shall be primary insurance. If the State of Iowa or the Iowa Judicial Branch 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 Judicial Branch, Vendor shall cause to be issued insurance policies with the coverages set forth below:

<i>Type of Insurance</i>	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$5 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	
Workers Compensation and Employer Liability	Each Occurrence	\$1 million
	Aggregate	\$2 million
	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 Judicial Branch 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 Iowa Judicial Branch 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 Judicial Branch. All certificates of insurance shall be subject to approval by the Judicial Branch. The Vendor shall

simultaneously with the delivery of the certificates deliver to the Judicial Branch one duplicate original of each insurance policy.

11.4 Liability of Vendor. Acceptance of the insurance certificates by the Judicial Branch 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 Judicial Branch 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.

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

11.6 Filing of Claims. In the event either the Judicial Branch 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 Judicial Branch's request, immediately file a proper claim under such policy. Vendor will provide the Judicial Branch with proof of filing of any such claim and keep the Judicial Branch 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 Judicial Branch and the State. Vendor shall pay to the Judicial Branch 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 Judicial Branch 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 Judicial Branch 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 Judicial Branch 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 Judicial Branch. Vendor shall not hold itself out as an employee or agent of the Judicial Branch. The Judicial Branch 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 Judicial Branch or the State for any purpose, including for federal or State tax purposes. The Judicial Branch 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 Judicial Branch which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Iowa Judicial Branch regarding equal employment. Vendor may be required to submit its affirmative action plan to the Judicial Branch 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 Judicial Branch may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

12.3 Confidentiality. 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 Judicial Branch or the State ("Judicial Branch Property") to the extent necessary to carry out its responsibilities under the Agreement. Such Judicial Branch Property shall at all times remain the property of the Judicial Branch and/or the State. Vendor shall preserve the confidentiality of Judicial Branch Property disclosed or furnished by the Judicial Branch 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 Judicial Branch 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 Judicial Branch to execute confidentiality or non-disclosure agreements to obtain access to certain Judicial Branch Property. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any Judicial Branch Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by the Judicial Branch 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 Judicial Branch 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 Judicial Branch. In the event that Vendor receives a request for access to any Judicial Branch Property, Vendor shall immediately communicate such request to the Judicial Branch for consideration and handling.

Vendor shall indemnify the Judicial Branch, 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 Judicial Branch may terminate this Agreement immediately without notice of default and opportunity to cure. Vendor acknowledges that the disclosure of any Confidential Information of the Judicial Branch or the State will immediately give rise to continuing irreparable injury to the Judicial Branch and others that is inadequately compensable in damages at law. Accordingly, and without prejudice to any other remedy available to the Judicial Branch, the Judicial Branch will be entitled to

injunctive relief. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

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 Judicial Branch, 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 Judicial Branch 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 Judicial Branch 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 Judicial Branch. Nothing in this provision will alter the right of the Judicial Branch 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 Judicial Branch may assign this Agreement to any State agency or unit of State government that succeeds the Judicial Branch's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Judicial Branch 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 Judicial Branch 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 Judicial Branch.

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 Judicial Branch. The Judicial Branch's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Judicial Branch, whether financial or otherwise. Any subcontract to which the Judicial Branch 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 Judicial Branch 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 Judicial Branch 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. If Vendor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the Deliverables provided under this Agreement, the Judicial Branch may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in the manner authorized in this paragraph shall not relieve Vendor or its surety from obligation with respect to any unpaid claims. All subcontracts shall contain provisions for the Judicial Branch 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 Judicial Branch 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 Judicial Branch 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, 12.20, 12.24, 12.25, 12.28, 12.30, 12.32, 12.33, and 12.37 - 12.39 shall survive termination of this Agreement and/or termination of Support.

12.11 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Judicial Branch and Vendor for the goods, services and other Deliverables 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 Judicial Branch 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 Judicial Branch:

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 Judicial Branch 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 Judicial Branch and the State by law, and shall in no way affect or impair the right of the Judicial Branch or the State to pursue any other contractual, equitable or legal remedy to which the Judicial Branch and the State may be

entitled. The election by the Judicial Branch 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 Judicial Branch are responsive to the Judicial Branch'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 Judicial Branch 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 Judicial Branch.

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 Judicial Branch, or anyone designated by the Judicial Branch, 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 Judicial Branch and the State are exempt from the payment of State sales and other taxes.

12.30 Title to Property. Title to all property (including Judicial Branch Property) furnished by the Judicial Branch and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of the Judicial Branch 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 Judicial Branch upon the earliest of completion, termination, or cancellation of this Agreement or at the Judicial Branch'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 Judicial Branch under this Agreement, shall pass to and vest in the Judicial Branch 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 Judicial Branch may obtain similar services from other service providers.

12.32 Award of Related Agreements. The Judicial Branch 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 Judicial Branch or the State in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by the Judicial Branch will abide by this provision.

12.33 Sovereign Immunity. The Judicial Branch 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 Disclaimer. All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Judicial Branch at the time the above-cited documents were prepared. The Judicial Branch 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.

12.35. Procurement by other Governmental Entities. Vendor acknowledges and agrees that other State agencies, Judicial Branches, 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.

12.36. Assignment of Third Party Warranties. Vendor hereby assigns and shall assign to the Judicial Branch 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.

12.37. Attorney's Fees and Expenses. In the event Vendor defaults in any obligations under this Agreement, Vendor shall pay to the Judicial Branch 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 Judicial Branch) incurred by the Judicial Branch in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.38 Contract Compliance Audit. Vendor agrees that the Judicial Branch 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 Judicial Branch 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 Judicial Branch or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

12.39 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 Judicial Branch Property furnished by the Judicial Branch 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 Judicial Branch 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 Judicial Branch. In addition, at the Judicial Branch's request, Vendor will reimburse the Judicial Branch 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 Judicial Branch and the State. Vendor shall obtain the prior advance written approval from the Judicial Branch prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks or intellectual property rights of the Judicial Branch or the State.

12.40 Notification of Events. Vendor shall notify the Judicial Branch 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:

12.40.1 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

12.40.2 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

12.40.3 Making an assignment for the benefit of creditors; or

12.40.4 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

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

12.40.6 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 administrative agency against all or any material portion of Vendor's property; or

12.40.7 Taking any action to authorize any of the foregoing.

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.

[Judicial Branch]

[Vendor]

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

ATTACHMENT 6 – SAMPLE SOFTWARE LICENSING AGREEMENT**Software License Agreement**

This Software License Agreement (the “Agreement”) is effective as of _____, 2006 (“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 Judicial Branch”) (the State and the Judicial Branch 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:

“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 Governmental Entities with their use of the Software consistent with the rights granted herein.

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

“Deficiency” means a defect, flaw, 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” shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4) (2005), or any successor provision to that section. The term Governmental Entity shall also include agencies, independent agencies, Judicial Branch’s, 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 Judicial Branch and Licensor dated _____.

“Software” means the _____ 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.

“Toolsets” means the business process modeling tool and any other programming, IDE, or business analysis tool or set of tools used by the Contractor for development or implementation of the requirements of RFP No. JB041707.

“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.

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

SECTION 2. SOFTWARE LICENSE

2.1 License. Licensors 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, and display the Software, 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]

2.1.5 [Sell, lease, license, sublicense or otherwise distribute or make available the Software, and all derivatives thereof and modifications thereto, to Third Parties.]

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, (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. All of the rights and privileges granted under this Agreement with respect to the Software shall apply to the Source Code, and Licensee and Authorized Users shall be entitled to exercise all of such rights and privileges with respect to the Source Code. In addition, Licensee and Authorized Users shall have a nonexclusive, irrevocable and perpetual license to maintain, modify, enhance, and prepare derivative works based upon, the Software and/or the Source Code.

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 the Software 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. Licensor shall submit to the Judicial Branch 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 Judicial Branch 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 Judicial Branch shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Judicial Branch believes the invoice is inaccurate or incorrect in any way.

5.3 Set Off. In the event that Licensor owes the Judicial Branch 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 Judicial Branch may set off such sum against any sum invoiced to the Judicial Branch in the Judicial Branch's sole discretion unless otherwise required by law. Amounts due to the Judicial Branch 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 Judicial Branch from any money or sum payable by the Judicial Branch to Licensor pursuant to this Agreement or any other agreement between Licensor and the Judicial Branch or the State.

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

SECTION 6. REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Licensor represents and warrants that during the Warranty Period, the Software (in whole and in part) shall: (i) be free from material Deficiencies; (ii) conform to and operate in accordance with all Specifications; and (iii) be compatible with and interoperate fully and correctly with the Licensee Systems specified in Schedule B. Licensor warrants that all media containing or relating to the Software furnished hereunder shall be free from defects in material and workmanship. During the Warranty Period, Licensor shall, at Licensee's request and at Licensor's expense, repair, correct or replace any Software that fails to comply with the warranties and requirements of this Section 6.1 promptly upon receiving notice of such failure from Licensee, but in no event more than 3 days after the date of receipt of such notice. In the event Licensor is unable to repair, correct or replace such Software to Licensee's satisfaction, Vendor 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 Licensor represents and warrants that Licensor is fully aware of Licensee's business requirements and intended uses for the Software as set forth in the RFP, and the Software shall satisfy such requirements in all material respects and is fit for such intended uses.

6.3 Licensor 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 Licensor; (iv) Licensor has not previously and will not grant any rights in the Software to any Third Party that are inconsistent with the rights granted herein; and (v) Licensee and Governmental Entities shall peacefully and quietly have, hold, possess, use and enjoy all Software without suit, disruption or interruption.

6.4 Licensor represents and warrants that: (i) the Software (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, the Software); (ii) Licensee's (and any Governmental Entity's) use of the Software in accordance with the terms of this Agreement; and (iii) Licensee's (and any Governmental Entity's) exercise of the rights, licenses and benefits granted or conveyed hereunder, do not and will not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Licensor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. Licensor shall immediately inform Licensee in writing upon becoming aware of any actual, potential or threatened claim of infringement or violation of any intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. If such a claim arises or is likely to arise, then Licensor shall, at the Licensee's request: (i) procure for the Licensee and Governmental Entities the right or license to continue to use the Software at issue; (ii) replace such Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation; or (iii) modify or replace the affected portion of the Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation. In the event Licensor is unable to fulfill its obligation under (i), (ii) or (iii) above as requested, Licensor shall accept the return of the Software and refund to the Licensee all fees, charges and any other amounts paid by the Licensee with respect to such Software. In addition, Licensor agrees to fully indemnify, 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. 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 Licensor represents and warrants that all Software provided under this Agreement which uses date data shall accurately process data, including but not limited to, calculating, comparing and sequencing from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, integral calculations, day-in-year calculations, day-of-week calculations and week-of-year calculations; and not experience abnormal ending and/or produce invalid or incorrect results in the operation of the Software or Licensee's System. If the Software is to perform as a system with other hardware and/or software, then this warranty shall apply to the Software as it processes, transfers, sequences data, or otherwise interacts with other software, hardware, components or other parts of the system, provided that such other software, hardware, components or parts do not fail to meet any applicable requirements of this Section 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 Judicial Branch 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.

SECTION 7. TERMINATION.

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

7.2 Termination by Licensee for Reasons Other Than Cause. Licensee may terminate this Agreement for any of the reasons for which the Judicial Branch may terminate the Services Contract (including Sections 10.2 and 10.3, but excluding Section 10.1) upon providing any applicable written notice expressly required to be provided pursuant to the Services Contract. For purposes of this Section 7.2, all references in the Services Contract to the terms "State," "Agreement," and "Deliverables" shall be deemed to include and additionally refer to the terms "Licensee," "Agreement," and "Software," respectively, as used herein. Licensee's right to terminate this Agreement for any of the reasons provided herein shall survive termination of the Services Contract.

7.3 Termination by Licensor for Cause. Licensor may only terminate this Agreement and revoke the license and other rights granted under this Agreement if Licensee has breached this Agreement by failing to pay in full the license fee specified in Section 5.1 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 7.3, Licensee will return the Software to Licensor or will certify in writing to Licensor that it has destroyed all copies of the Software. Except as expressly provided in this Section 7.3, Licensor shall not be entitled to terminate this Agreement or revoke the license and other rights granted herein.

7.4 Limitation of the Licensee's Payment Obligations. In no event shall Licensee be required to pay any amounts other than those expressly stated in Section 5.1 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:

7.4.1 The payment of unemployment compensation to Licensor's employees;

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

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

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

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

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 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:

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 Judicial Branch'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.

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 Judicial Branch 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 Judicial Branch of Management regarding equal employment. Licensor may be required to submit its affirmative action plan to the Judicial Branch 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 Licensor.

9.6 Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Licensor hereby irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Licensee, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Licensor irrevocably consents to service of process by certified or registered mail addressed to the Licensor's designated agent. The Licensor appoints [name] at [address] Des Moines, Iowa, as its agent to receive service of process. If for any reason the Licensor's agent for service is unable to act as such or the address of the agent changes, Licensor shall immediately appoint a new agent and provide the Judicial Branch 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 Judicial Branch's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Judicial Branch to which the Software relates. For purposes of construing this clause, a transfer of a controlling interest in the Licensor, a merger, sale or consolidation of Licensor, or a sale of substantially all of Licensor's assets shall be considered an assignment. Licensor agrees that it shall provide Licensee with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Licensor and of any proposed merger, sale or consolidation of Licensor. Licensor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Licensor or any affiliate thereof without the prior written consent of Licensee.

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. Licensor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Licensee on the basis of draftsmanship or preparation hereof.

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. Licensor's obligations under this Agreement which by their nature would continue beyond the termination

of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 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, 9.29, and 9.33-9.35 shall survive termination of this Agreement.

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

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

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

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 _____ Judicial Branch

By: _____

Date: _____

Title: _____

ATTACHMENT 7 – TECHNICAL PROPOSAL RESPONSE FORM

**TECHNICAL PROPOSAL
RESPONSE FORM**

**STATE OF IOWA
ELECTRONIC DOCUMENT MANAGEMENT
SYSTEM (EDMS)**

REQUEST FOR PROPOSAL NO. JB041707

Submitted by:	
Firm Name:	
Address:	
City, State, Zip	
Telephone:	
Fax:	
E-Mail Address:	
Signed:	
Print Name:	
Title:	
Date:	

ATTACHMENT 8 – COST PROPOSAL RESPONSE FORM

**COST PROPOSAL
RESPONSE FORM**

**STATE OF IOWA
ELECTRONIC DOCUMENT MANAGEMENT
SYSTEM (EDMS)**

REQUEST FOR PROPOSAL NO. JB041707

Submitted by:	
Firm Name:	
Address:	
City, State, Zip	
Telephone:	
Fax:	
E-Mail Address:	
Signed:	
Print Name:	
Title:	
Date:	

ATTACHMENT 9 – MANDATORY COST PROPOSAL FORMAT

MANDATORY COST PROPOSAL FORMAT

DESCRIPTION: (ADD LINES AS NECESSARY)	COST:
TOTAL, ALL-INCLUSIVE, NOT-TO-EXCEED COST:	

Submitted by _____ **Date:** _____

Company: _____ **City/State:** _____

Attach a signed W9 Form.
All pricing shall be FOB Destination, freight & handling costs included in prices.