

SERVICES CONTRACT

This Agreement for professional services and other deliverables (this “Agreement”), made and effective as of March 15, 2012 (“Effective Date”), by and between the State of Iowa, acting by and through the Iowa Secretary of State [the “Department”] and BPro, Inc., a corporation organized under the laws of South Dakota (the “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 with the modification and implementation of the South Dakota Central Voter Registration System software application for the Department and the State of Iowa (the “State”), as more fully described in this Agreement and the Statement(s) of Work.

1.2 Term. The term of this Agreement is from March 15, 2012, through Final Acceptance by the Department unless terminated earlier in accordance with the terms of this Agreement. After expiration of this Agreement, the Department shall have the option to purchase software maintenance services from Vendor on a time and materials basis at the hourly rate set forth in Section 5 of this Agreement for two additional two (2) year terms. Such software maintenance services shall be described in a separate software maintenance agreement, executed no fewer than thirty (30) days prior to the start date of that agreement.

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 Department has determined that one or more Deliverables satisfy the Department’s Acceptance Tests. Final Acceptance means that the Department has determined that all Deliverables to be provided under a Statement of Work satisfy the Department’s Acceptance Tests. Non-acceptance means that the Department has determined that one or more Deliverables have not satisfied the Department’s Acceptance Tests.

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

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

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

“Derivative Works” means copyrightable creations developed by or on behalf of the Department that are based on the Deliverables developed under this Agreement but does not include the South Dakota Voter Registration System used as the base product for the Deliverables

“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 releases of Software, and all changes to the Documentation and Source Code made by Vendor as a result of such Enhancements.

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

independent agencies, the Judicial Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government.

“Project” means the project to develop and implement the System and all services and Deliverables to be performed and provided by Vendor as described in a Statement of Work.

“Project Completion Date” means the date by which Vendor must complete all work and provide all Deliverables pursuant to any Statement of Work. For purposes of this Agreement, the Project Completion Date will be specified in a Statement of Work.

“Software” means all software, programs, applications and components which comprise the System including all Third Party Software and any other software, programs, applications and components listed in any and all Statements of Work, 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 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).

“Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Agreement or the Documentation. 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 System, including all data elements, logical relationships and an entity relationship diagram, the functional requirements specifications and a functional design for the System, including descriptions of each System function and a functional hierarchy diagram, a definition of the existing and planned System modules, including a diagram showing the system design, interface design document including descriptions of all internal and external interfaces, final specifications of the System architecture, including hardware, software and operating system for all system components and interfaces, the detailed System 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. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

“Statement of Work” means the initial statement of work set forth in Schedule A to this Agreement, and any additional statement of work that may be executed by the parties, and any amendments thereto. Each Statement of Work will describe the Deliverables and services to be provided by Vendor and the fixed, not-to-exceed compensation and final delivery dates associated therewith. Each Statement of Work is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

“System” means the Iowa Voter and Election Management System as more fully described in the Agreement (including the Statement(s) of Work) and all component parts and Deliverables which comprise the System.

“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 licensed or acquired from Third Parties except it does not include the license necessary to modify the Source Code for the development environment in which the application was created. Third Party Software shall be considered Software under this Agreement.

SECTION 3. DOCUMENTS INCORPORATED

Intentionally Omitted

SECTION 4. SCOPE OF WORK

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

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

4.3 Delivery. Vendor shall deliver to the Department all Deliverables as set forth in a Statement of Work. Vendor acknowledges and agrees that it shall deliver and provide to the Department all Source Code and Documentation related to any Software or other Deliverables that are created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor under each Statement of Work, unless otherwise agreed to in writing by the Department. Vendor shall provide all such Deliverables in both hard copy and electronic format (acceptable to the Department) and as otherwise required and noted herein or in the applicable Statement of Work.

4.4 Performance Standards. The parties agree that the performance standards and related payment, monitoring and review provisions set forth in Schedule B are incorporated herein by this reference as if fully set forth in this Agreement.

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

4.6 Hardware. Vendor shall recommend to the Department all Third Party hardware necessary or desirable to be acquired to complete work and provide the Deliverables under a Statement of Work. The Department will procure such Third Party hardware directly upon such terms and conditions as are acceptable to the Department at Department's sole expense.

4.7 Third Party Software. Vendor shall recommend to the Department all Third Party Software necessary or desirable to be acquired to complete work and provide all Deliverables under a Statement of Work. At the Department's sole discretion, the Department will license such Third Party Software directly or require Vendor to license or sublicense the Third Party Software to or on behalf of the Department at the Department's expense. In the latter case, Vendor shall ensure that all Third Party

Software or other materials provided pursuant to this Agreement shall be licensed to the Department pursuant to a license agreement, the terms and conditions of which must be acceptable to the Department.

4.8 Manufacturers' Warranties. Vendor shall take all action necessary to ensure that the State and the Department shall be entitled to receive and enjoy all warranties, indemnities and other benefits associated with Third Party Software and Third Party hardware. At the Department's request, Vendor shall assign to the State and the Department all of the licensor's and manufacturer's warranties and indemnities pertaining to Third Party Software and Third Party hardware under any license or other agreement between Vendor and any Third Parties relating to any Third Party Software and Third Party hardware.

SECTION 5. COMPENSATION AND ADDITIONAL RIGHTS AND REMEDIES

5.1 Compensation. In consideration of Vendor providing the Department with the Deliverables in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such Deliverables as specified in a Statement of Work, subject to all terms and conditions of this Agreement, including, without limitation Section 5.2 (Invoices) and Section 5.3 (Retention). The Department shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement or any Statement of Work. Vendor shall be compensated on a time and materials basis, at the rate of \$80/ hour for the development of each Deliverable however the total amount of compensation paid under this agreement shall not exceed \$650,000 until otherwise mutually agreed in writing by the parties. Vendor is not entitled to payment for any Deliverable provided under this Agreement or any Statement of Work if the Department in good faith 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 Department be obligated to pay Vendor any fees, costs, compensation or other amounts in excess of the amount specified in this Agreement, unless the Department 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 Department. No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the Department shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the Department or the State. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement.

5.2 Invoices. Vendor shall submit detailed monthly invoices less the Retained Amount(s) to be withheld in accordance with section 5.3, requesting payment of compensation and all such supporting information to justify the requested compensation and such other information as the Department may request in accordance with this Agreement. At a minimum, each invoice shall detail the number of hours and the applicable hourly rate by Deliverable and specific task. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Department. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Department may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Department shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Department believes the invoice is inaccurate or incorrect in any way.

5.3 Retention. To secure Vendor's performance under this Agreement, the Department shall retain 10% of the fees or other compensation billed for each Deliverable and payable hereunder (the "Retained Amounts"). The Retained Amounts provided for any Deliverable under any Statement of Work shall be payable upon the Department's delivery of written notice of Final Acceptance of such Deliverables to Vendor, subject to the terms and conditions hereof.

5.4 Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Department the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the Department of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Department under this Section 5.4, the Department will charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Department may, in its sole discretion, elect to have Vendor apply any amounts due to the Department under this Section 5.4 against any amounts payable by the Department under this Agreement.

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

5.6 Set-off Against Sums Owed by Vendor. In the event that Vendor owes the Department or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Department may set off such sum against any sum invoiced to the Department by Vendor in the Department's sole discretion unless otherwise required by law. Any amounts due to the Department as damages may be deducted by the Department from any money or sum payable by the Department to Vendor pursuant to this Agreement or any other agreement between Vendor and the Department.

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

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

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

with all necessary materials with respect to such repaired or corrected Deliverable, including without limitation the provision of new Source Code, master program disks or other media acceptable to the Department and related Documentation.

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

SECTION 6. ACCEPTANCE TESTS, PROJECT MANAGEMENT AND KEY PERSONNEL

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 a Statement of Work. Vendor shall deliver, install and complete all services and provide all Deliverables with respect to a Statement of Work no later than the Project Completion Date.

6.2 All Deliverables shall be subject to the Department's Acceptance Testing and Acceptance, unless otherwise specified in a Statement of Work. Upon completion of all work to be performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to the Department certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Department to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Department. At the Department's request, Vendor shall assist the Department in performing Acceptance Tests. Within a reasonable period of time after the Department has completed its Acceptance Testing, the Department shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Department determines that a Deliverable satisfies its Acceptance Tests, the Department shall provide Vendor with notice of Acceptance with respect to such Deliverable. If the Department determines that a Deliverable fails to satisfy its Acceptance Tests, the Department shall provide Vendor with notice of Non-acceptance with respect to such Deliverable. In the event the Department provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to the Department within ten (10) days of Vendor's receipt of notice of Non-acceptance so that the Department may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Department determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Vendor has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy its Acceptance Tests, then the Department shall have the continuing right, at its sole option, to: (i) require Vendor to correct and repair such Deliverable within such period of time as the Department may specify in a written notice to Vendor; (ii) refuse to accept such Deliverable without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable); (iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Department's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Department to correct such Deficiencies; or (iv) terminate this Agreement and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 10 of this Agreement, the Department may terminate this Agreement pursuant to this Section 6.2 without providing Vendor with any notice or opportunity to cure provided for in Section 10. The Department's right to exercise the foregoing rights and remedies, including termination of this Agreement, shall remain in effect until Acceptance Tests are successfully completed to the Department's satisfaction and the Department has provided Vendor with written notice of Final Acceptance. If the Department determines that all Deliverables satisfy its Acceptance Tests, the

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

In addition, Vendor's receipt of any notice of Acceptance with respect to any Deliverable(s) shall not be construed as a waiver by the Department of its right to refuse to provide notice of Final Acceptance.

6.3 Project Management and Reporting.

6.3.1 Vendor or Project Manager. At the time of execution of this Agreement, Vendor shall designate, in writing, a Project Manager acceptable to the Department to serve until the expiration of this Agreement. Vendor will assign a Project Manager of a management level sufficient to assure timely responses from all Vendor personnel, timely completion of tasks and achievement of milestones. 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 will be available either, by telephone or E-mail to respond promptly (in no event more than 2 hours after receipt of a request or inquiry from the Department) during the business day to inquiries from the Department;

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

6.3.3 Reports. Vendor shall provide the Department with bimonthly 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, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Department may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Department's approval;

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

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

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

6.3.5.2 Vendor's Response. Vendor shall submit to the Department a firm cost proposal, if applicable, for the requested change order within five (5) business days of receiving the Department's change order request. Modifications to the Statement of Work that incorporate additional detail with respect to any Deliverable shall not have the effect of increasing the not-to-exceed cost of that Deliverable, unless at the time of the modification of the Statement of Work the Vendor can show by clear and convincing evidence to the Department that the process of gathering detailed requirements for the Project 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 Project 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 incorporate the changes into the Statement of Work and this Agreement. No services shall be performed pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both parties. Upon such execution, a change order shall alter only that portion of a Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement.

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

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

SECTION 7. OWNERSHIP AND INTELLECTUAL PROPERTY

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

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

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

7.4 Further Assurances. At the Department'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 Department to: (i) establish, perfect or protect the State's and the Department's rights in and to the State-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 7.3, 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 Department is unable, after reasonable effort, to secure Vendor's signature on any letters patent, copyright, or other analogous protection relating to the State-Owned Deliverables, for any reason whatsoever, Vendor hereby irrevocably designates and appoints the Department, and its duly authorized officers, employees and agents, as Vendor's agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Vendor.

7.5 Third Party Intellectual Property. In the event that a Deliverable is intellectual property owned by a Third Party ("Third Party Intellectual Property"), Vendor shall secure on behalf of and in the name of the State and the Department, an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare Derivative Works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on the Department's and the State's behalf. In the event that a Deliverable created by Vendor under this Agreement is a derivative work based upon Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Vendor shall secure on behalf of and in the name of the State and the Department an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare Derivative Works based upon, distribute copies of, perform and display the pre-existing elements of such Third Party Intellectual Property, and to authorize others to do the same on the State's and the Department's behalf.

7.6 Rights of the Federal Government. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Agreement and the copyright in and to such Deliverables.

SECTION 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement for two years following the date on which the Department provides Vendor with written notice of Final Acceptance (the "Warranty Period"). During the Warranty Period, and upon written request of the Department, 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 Department. For failures that occur during an election period while under 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 twenty-four (24) hours of receiving notice of such Deficiencies or failures from the Department. In the event Vendor is unable to repair, correct or replace such Deliverable to the Department's satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Agreement, and the Department shall be entitled to pursue any other available contractual, legal or equitable remedies. Vendor shall be available at all reasonable times to assist the Department with questions, problems and concerns about the Deliverables, to inform the Department promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable may have been accepted by the Department, and provide the Department with all necessary materials with respect to such repaired or corrected

Deliverable. The Warranty Period will terminate immediately upon a program modification made by or on behalf of the Department without prior written authorization of Vendor's Key Personnel.

8.2 Vendor represents and warrants that it is fully aware of the Department's business requirements and intended purposes and uses for the Deliverables as set forth herein, and 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 Department hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Department hereunder without violating any rights of any Third Party; (iii) Vendor has not previously and will not grant any rights in any Deliverables to any Third Party that are inconsistent with the rights granted to the Department herein; and (iv) the Department shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

8.4 Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) the Department'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 Department in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Vendor shall, at the Department's request and at the Vendor's sole expense: (i) procure for the Department the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to the Department all fees, charges and any other amounts paid by the Department under this Agreement or any related agreement with respect to such Deliverable. In addition, Vendor agrees to indemnify, defend, protect and hold harmless the Department and the State and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement, including for any breach of the representations and warranties made by Vendor in this Section 8.4. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Department and shall survive termination of this Agreement.

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

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

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

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

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

8.10 Vendor covenants that it will comply with and adhere to all Department and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and that Vendor will take all precautions necessary to prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information.

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

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

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 are to be interpreted expansively to give the broadest warranty protection to the Department.

SECTION 9. INDEMNIFICATION

9.1 Vendor and its successors and permitted assigns shall indemnify and hold harmless the Department, the State and their employees, officers, board members, agents, representatives, and officials

(“Indemnitees”) from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General’s Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) 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 that is false, deceptive, or misleading; or
- 9.1.2 Any negligent act 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, and federal 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 obligations under this Section 9 are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.

9.3 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.

9.4 Vendor’s duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Department or any other Indemnitee.

SECTION 10. DEFAULT AND TERMINATION

10.1 Termination for Cause by the Department. The Department may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in the Department’s notice of breach or any subsequent notice or correspondence delivered by the Department to Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for liquidated damages. In addition, the Department may terminate this Agreement effective

immediately without penalty or legal liability 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 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, suspends or sells a controlling interest in its business;

10.1.5 Vendor's authorization to engage in business either in Iowa or place of organization is suspended, terminated, revoked or forfeited;

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

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

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

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

10.1.9.1 Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

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

10.1.9.3 Making an assignment for the benefit of creditors;

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

10.1.9.5 Taking any action to authorize any of the foregoing.

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

10.2 Termination for Convenience. Following sixty (60) days written notice, the Department may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation or liability to Vendor. Termination for convenience can be for any reason or no reason at all.

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

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

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

10.3.3 If the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

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

10.3.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Department's ability to fulfill any of its obligations under this Agreement or the operation of the System.

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

10.4 Limitation of the State's Payment Obligations. In the event of termination of this Agreement for any reason by either party (except for termination by the Department pursuant to Section 10.1), the Department shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the Department up to and including the date of termination of this Agreement and for which the Department is obligated to pay pursuant to this Agreement; provided however, that in the event the Department terminates this Agreement pursuant to Section 10.3, the Department'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 Department and shall not be construed to require the Department to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the Department in accordance with the terms of this Agreement. The Department shall not be liable, under any circumstances, for any of the following:

- 10.4.1** The payment of unemployment compensation to Vendor's employees;
- 10.4.2** The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
- 10.4.3** Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement;
- 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;
- 10.4.5** Any taxes Vendor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

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

- 10.5.1** Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Department may require;
- 10.5.2** Immediately cease using and return to the Department any property (including, without limitation, Department Property) or materials, whether tangible or intangible, provided by the Department to Vendor;
- 10.5.3** Cooperate in good faith with the Department and its employees, agents and independent contractors during any transition period specified by the Department in connection with the transition of work, services and Deliverables to be provided by any replacement service provider;
- 10.5.4** Immediately return to the Department any payments made by the Department for services or Deliverables that were not rendered or provided by Vendor;
- 10.5.5** Immediately deliver to the Department any and all Deliverables (including State-Owned Deliverables, Source Code, object code, Software, and Documentation) for which the Department has made payment (in whole or in part) that is in the possession of under the control of the Vendor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

10.6 Termination for Cause by Vendor. Vendor may only terminate this Agreement upon written notice of the breach by the Department of any material term, condition or provision of this Agreement, if such breach is not cured within sixty (60) days of the Department's receipt of Vendor's written notice of breach. Acquisition of a controlling interest in Vendor by a party outside of this agreement is not a valid reason for termination of this agreement. The Department shall immediately deliver to Vendor any and all Deliverables for which Department has not made any payment that is in possession or under the control of the Department or State.

SECTION 11. INSURANCE

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

Unless otherwise requested by the Department, 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 Products – Comp/Op Aggregate Personal injury Each Occurrence	\$5 million \$1 million \$1 million \$1 million
Excess Liability, umbrella form	Each Occurrence Aggregate	\$1 million \$1 million
Errors and Omissions Insurance	Each Occurrence	\$1 million
Property Damage	Each Occurrence Aggregate	\$1 million \$1 million
Workers Compensation and Employer Liability	As Required by Iowa law	

11.2 Claims Provision. All insurance policies required by this Agreement, with the exception of the policy for Errors and Omissions Insurance, must provide coverage on an "occurrence basis" for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy. The policy for Errors and Omissions Insurance will provide coverage on a "claims made" basis, provided however, that such policy includes Extended Reporting Period or Tail Coverage acceptable to the Department.

11.3 Certificates of Coverage. At the time of execution of this Agreement, Vendor shall deliver to the Department certificates of insurance certifying the types and the amounts of coverage, certifying that said

insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to this Agreement, certifying that the State of Iowa and the Department are named as additional insureds on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Department. All certificates of insurance shall be subject to approval by the Department. The Vendor shall simultaneously with the delivery of the certificates deliver to the Department one duplicate original of each insurance policy.

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

11.5 Waiver of Subrogation Rights. Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers, with the exception of the insurance carrier for the policy for the Errors and Omissions Insurance, might have against the Department or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Department for all policies except for the policy for the Errors and Omissions Insurance.

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

11.7 Proceeds. In the event the Department or the State suffers a loss that may be covered under any of the insurance policies required under this Section 11, neither the Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Department and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the Department and the State all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Agreement.

SECTION 12. CONTRACT ADMINISTRATION

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

tax purposes. The Department shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

12.2 Compliance with the Law and Regulations.

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

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

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

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

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

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

12.6 Choice of Law and Forum.

12.6.1 This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof;

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

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

12.6.4 Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints Lona Lewis, _____, as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Department. Nothing in this provision will alter the right of the Department to serve process in any other manner permitted by law;

12.6.5 This Section 12.6 shall survive termination of this Agreement.

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

12.8 Use of Subcontractors/Third Parties. None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of the Department. The Department's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Department, whether financial or otherwise. Any subcontract to which the Department has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Department may deem necessary. Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify and hold harmless the Department and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any subcontractor. In addition, the Department is not responsible for any failure of any subcontractor to pay any amounts that may be due to Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the Deliverables provided under this Agreement, the Department 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 any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow the Department to access the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for 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 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. The Department shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, or "sneakwrap" agreement (or any other similar agreement) that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Department on the basis of draftsmanship or preparation thereof.

12.10 Obligation Beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4, 5, 7, 8, 9, 10.4 - 10.6, 11, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.16, 12.18, 12.19, 12.24, 12.25, 12.28, 12.30, 12.32, 12.33, and 12.37 – 12.39 shall survive termination of this Agreement and/or termination of Support.

12.11 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Department and Vendor for the goods, services and other Deliverables provided in connection with this Agreement.

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

12.13 Notices.

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

If to the Department: Sarah Reisetter, Director of Elections
321 E. 12th St.
Des Moines, IA 50319

If to Vendor: Brandon Campea
318 S. Pierre St.
Pierre, SD, 57501

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.26 Delays or Impossibility of Performance. Neither party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a “force majeure.” The term “force majeure” as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. “Force majeure” does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of Vendor or any subcontractor used by Vendor; claims or court orders that restrict Vendor’s ability to deliver the Deliverables contemplated by this Agreement; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor’s or supplier’s conduct, negligence or failure to perform, the Vendor shall not be excused from compliance with the terms and obligations of the Vendor unless the subcontractor or supplier is prevented from timely performance by a “force majeure” as defined in this Agreement. If a “force majeure” delays or prevents the Vendor’s performance, the Vendor shall immediately 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 determined solely by the Department. The party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which the Vendor’s performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

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

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

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

12.30 Title to Property. Title to all property (including Department Property) furnished by the Department and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of the Department and/or the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Department upon the earliest of completion, termination, or cancellation of this Agreement or at the Department's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Department under this Agreement, shall pass to and vest in the Department and/or State, except as otherwise provided in this Agreement.

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

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

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

12.34 Intentionally Omitted

12.35 Intentionally Omitted

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

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

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

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

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

12.40.1 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, restraint, 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.

12.40.8 Taking any action to sell a controlling interest in Vendor to any other corporation or entity.

SECTION 13. LIQUIDATED DAMAGES

13.1 General

13.1.1 The Department and Vendor agree that it will be extremely impractical and difficult to determine actual damages, which the Department will sustain in the event the Deliverables do not perform as expected. The goods and services to be provided under the contract are not readily available on the open market; and any breach by the Vendor will delay and disrupt the Department's operations and will lead to damages. Therefore, the parties agree that the liquidated damages as specified in all the Sections below are reasonable and will remain reasonable as long as the contract is in force.

13.1.2 In no case shall liquidated damages be measured in terms of potential lost revenue or potential lost net profit to the Department, unless and to the extent that the Department determines or alternatively, that a court of competent jurisdiction determines that actual loss can be measured precisely and that the written liquidated damages provision is unreasonable and/or unenforceable as a matter of law.

13.1.3 Assessment of liquidated damages shall be in addition to and not in lieu of such other remedies as may be available to the Department. Except and to the extent expressly provided herein, the Department shall be entitled to recover liquidated damages for nonperformance under this agreement.

13.2 Liquidated Damages Schedule.

Liquidated damages will be assessed according to the following schedule:

13.2.1 Non-performance under this agreement = \$10,000/ per each occurrence.

13.2.2 Termination of this Contract pursuant to section 10.1 before the end of the Contract term = \$100,000.

13.3 Notification of Liquidated Damages.

All assessments of liquidated damages shall be made by the Department. Upon determination that liquidated damages are to or may be assessed, the Department shall notify the Vendor of the assessment in writing.

13.4 Conditions for Termination of Liquidated Damages

13.4.1 As determined appropriate by the Department, the following are the conditions under which the Vendor may obtain relief from the continued assessment of liquidated damages that have been imposed.

13.4.2 Except as waived in writing by the Department, no liquidated damages imposed shall be terminated or suspended until the Vendor issues a written notice verifying the corrections of the condition(s) for which liquidated damages were imposed and all the Vendor corrections have been subject to verification at the discretion of the Department.

13.4.3 If appropriate, the Vendor shall conduct systems testing of any correction as the Department deems necessary. Such testing shall be developed jointly by the Department and the Vendor and approved by the Department including the test script, test environment and the test result.

13.4.4 The documentation necessary for verification and approval shall be determined by the Department. The Department shall be the sole judge of the accuracy of any documentation provided.

13.4.5 A Vendor notice of correction will not be accepted until the correction is verified by the Department.

13.5 Severability of Individual Liquidated Damages. If any portion of the liquidated damages provisions is determined to be unenforceable in one or more applications, that portion remains in effect in all applications not determined to be invalid and is severable from the invalid applications. If any portion of the liquidated damages provisions is determined to be unenforceable, the other provision or provisions shall remain in full force and effect.

13.6 Waivers of Liquidated Damages. It is expressly agreed that the waiver of any liquidated damages due the Department shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Failure to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by the Department.

13.7 Payment of Liquidated Damages. All assessed liquidated damages shall be deducted from any moneys owed the Vendor by the Department, and in the event the amount due to the Vendor is not sufficient to satisfy the amount of the liquidated damages, the Vendor shall have the damages deducted from subsequent invoices. Recovery of liquidated damages will be accomplished by either invoice deduction, lump sum payment or a combination thereof within thirty (30) days.

13.8 Applicability of Liquidated Damages. Vendor shall not be required to pay liquidated damages for delays solely due to matters as enumerated in the Section entitled Force Majeure or for time delays specifically approved in writing by the Department.

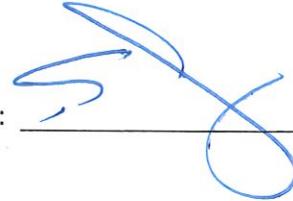
IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives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

State of Iowa, acting by and through
the Iowa Secretary of State

By: 
Name: Matt Schultz
Title: Secretary of State

Date: 03/15/2012

BPro, Inc.

By: 
Date: 3/15/2012

SCHEDULE A –STATEMENT OF WORK

The Vendor agrees to modify the South Dakota Central Voter Registration System for use in Iowa by the Department to be used as a voter registration and election management application throughout the state by county registrars and commissioners.

The Vendor further agrees to provide assistance to the Secretary of State's office with user training sessions during the implementation time period as mutually agreed by the parties in writing. The Secretary of State's office shall reimburse the Vendor for travel requested by the Secretary of State's office in writing at the in-state Iowa employee travel reimbursement rate established by the Iowa Department of Administrative Services.

The Department and Vendor agree to the following stages of project development. All due dates listed in this Statement of Work may be modified as mutually agreed by the parties in writing.

Development Stage/ Deliverable	Specifications Due Date	Due Date
Current Data Conversion and Import	April 1, 2012	June 1, 2012
Election Management System	June 1, 2012	January 1, 2013
Voter Registration System	June 1, 2012	January 1, 2013
Voter List Maintenance Matching Processes	September 1, 2012	January 1, 2013
User Roles Definition/ System Setup	September 1, 2012	January 1, 2013
Scanning Utility	September 1, 2012	January 1, 2013
Reports Module	December 1, 2012	February 1, 2013
Website Integration	January 1, 2013	August 1, 2013
UOCAVA E-Balloting (push only)	January 1, 2013	August 1, 2013

SCHEDULE B –PERFORMANCE STANDARDS: PAYMENT, MONITORING AND REVIEW

The parties acknowledge and agree that high quality and timely delivery of the Deliverables that Vendor is required to provide as part of this Agreement is important and essential to the overall success of this Agreement; and acceptable performance requires satisfaction of elements as determined by the Department.

1. PAYMENT FOR PERFORMANCE

- Vendor compensation is tied to performance of the agreement. Specific criteria are provided in, but not limited to Sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.10, 6.2, 8.1, 8.6 and 10.4 of the Agreement.
- Vendor will submit to the Department detailed invoices on a monthly basis requesting payment of compensation and all such supporting information to justify the requested compensation and such other information as the Department may request in accordance with Section 5.2 of the Agreement. At a minimum, the invoice shall detail the number of hours and the applicable rate by Deliverable stage and task; and identification of the specific area of project development the hours are assigned.
- Vendor is required by this Agreement to provide the Department with detailed bimonthly reports in accordance with Section 6.3 of this Agreement.
- Vendor will comply with the Monitoring and Review provisions of this Agreement.
- The Department will perform Acceptance Testing in accordance with this Agreement.

2. MONITORING

In order to allow the Department to effectively monitor the Vendor's compliance with and performance under this Agreement, the Vendor will in accordance with this Agreement provide the following documentation:

- Detailed invoices with supporting information as required by Section 5.2 of this Agreement.
- Bimonthly activity status reports as defined in Section 6.3 of this Agreement.
- The Department will use the Acceptance procedures described in Section 6.2 of the Agreement to monitor the quality of Deliverables and to determine whether Deliverables meet Acceptance Criteria.
- Allow inspection of Vendor's facilities, books, and records kept in accordance with Section 12.19 of this Agreement, as stated in Section 12.28 of this Agreement.

3. REVIEW

The Department will use the following measures and documentation in reviewing performance under this Agreement:

- Monitoring the Project schedule and timely completion of scheduled tasks.

- Detailed invoices with supporting information as required by Section 5.2 of this Agreement.
- Bimonthly activity status reports as defined in Section 6.3 of this Agreement.
- Documentation of any inspection of materials or facilities as stated in Section 12.28 of this Agreement.
- Acceptance Testing as defined in Section 2 of this Agreement.