

**MEMORANDUM OF UNDERSTANDING BETWEEN THE IOWA DEPARTMENT OF
REVENUE AND _____ REGARDING STATE SETOFF PROGRAM**

**ARTICLE I
PURPOSE**

- 1.1 The purpose of this memorandum of understanding (“Agreement”) is to define the terms and conditions of [_____] (“Participating Agency”)’s participation in the State Setoff Program (“Program”), as administered by the Iowa Department of Revenue (“IDR”). Participating Agency and IDR may individually be referred to as a “Party”, or collectively as “Parties”.

**ARTICLE II
DEFINITIONS & AUTHORITY**

2.1 Definitions.

- 2.1.1 “Credit Vendor” means an agency or entity who submits funds to the Program.
- 2.1.2 “Data” means any information in the possession of or owned by the Participating Agency or IDR that is shared with the other Party under this Agreement.
- 2.1.2.1 Data may include personal information as defined by Iowa Code section 715C.1(11).
- 2.1.2.2 IDR shall at no time share federal tax information pursuant to this Agreement. IDR shall only share state tax information as allowed by law.
- 2.1.3 “Debt” means any amount, as measured in money, owed to a Public Agency.
- 2.1.4 “Debt Portal” means the online system through which the Participating Agency will administer its Debt.
- 2.1.5 “Debt Type” means a category of Debt that has become due, owing, and payable under statute, administrative rule, or other lawful means.
- 2.1.6 “Obligor” means as defined in Iowa Code 421.65(1)(a).
- 2.1.7 “Obligor Directory Information” means the Obligor’s Name, Address, Phone Number, and Email Address.
- 2.1.8 “Obligor Information” means any information regarding the Obligor required by IDR, including “Obligor Directory Information”.
- 2.1.9 “Participating Agency” means a Public Agency or the Iowa Judicial Branch (“IJB”), that has entered into an agreement with IDR to participate in the State Setoff Program.
- 2.1.10 “Public Agency” means as defined in Iowa Code 421.65(1)(b).
- 2.1.11 “Public Payment” means as defined in Iowa Code section 421.65(1)(c).
- 2.1.12 “Qualifying Debt” means as defined in Iowa Code section 421.65(1)(d).
- 2.1.13 “Setoff Fee”, as outlined in Section 3.4.4, means the amount paid by the Participating Agency per setoff to IDR for participation in the State Setoff Program.
- 2.1.14 “State Setoff Program” or the “Program” means the program established by Iowa Code section 421.65 to set off against each Public Payment any Qualifying Debt the Obligor owes to a Participating Agency.
- 2.1.15 All monetary amounts referenced in this Agreement and throughout the State Setoff Program shall be in United States Dollars.
- 2.1.16 Unless otherwise specified, references to IDR and Participating Agency shall include their officers, employees, agents, and contractors. FAST Enterprises, LLC (Fast) is a contractor of IDR. Participating Agency authorizes Fast access to Participating Agency Data subject to this Agreement.
- 2.1.17 All statutes and administrative rules shall be construed as may be enacted or amended at any time during the term of this Agreement. In any circumstance where this Agreement conflicts with statute or administrative rule, all Parties shall abide by the statute or administrative rule.
- 2.2 **Legal Authority.** This Agreement is entered into pursuant to the authority in Iowa Code section 421.65 and Iowa Administrative Code chapter 701-26.

**ARTICLE III
PROGRAM PARAMETERS**

3.1 Program Admission.

- 3.1.1 The Public Agency or IJB wishing to participate in the Program must complete and submit the application as designated by IDR. All required fields must be reported.
- 3.1.2 This Agreement meets the requirement for a memorandum of understanding as outlined in Iowa Administrative Code rule 701-26.3.
- 3.1.3 Contact Persons.
 - 3.1.3.1 The Participating Agency must provide a contact person for operational questions and backup contact person for when the contact person is unavailable. Operational questions constitute questions originating from IDR regarding the processing of setoffs.
 - 3.1.3.2 The Participating Agency must provide a contact person for Obligor questions and backup contact person for when the contact person is unavailable. Obligor questions constitute questions originating from the Obligor regarding the Obligor's Debt or the amount setoff.
 - 3.1.3.3 The Participating Agency must provide the name, title, phone number, and email address of each contact person.
 - 3.1.3.4 The Participating Agency must update and confirm all contact persons and all contact information no less than annually and upon request.
 - 3.1.3.5 All contact persons must ensure that calls and correspondence are handled in a timely manner.
 - 3.1.3.6 Contact person contact information may be updated without a formal amendment to this Agreement by providing written notice to IDR in the manner designated by IDR.

3.2 Prior to Submission of Debt.

- 3.2.1 Participating Agency shall keep a record of all communication with the Obligor until the Debt has been paid in full and the setoff appeal period has expired, or has been removed from the Program.
- 3.2.2 Participating Agency shall provide Obligor with an opportunity to protest or challenge the Debt, in compliance with applicable law and due process.
- 3.2.3 Steps outlined in Sections 3.2.1 and 3.2.2 above must be completed for each Debt prior to that Debt's submission to the Program.
- 3.2.4 Participating Agency's correspondence to Obligor shall include the Participating Agency's obligor contact information. The correspondence shall not include IDR or the Program's operational contact information.
- 3.2.5 Prior to submitting a Debt Type to the Program, a Participating Agency shall provide the Department with a description of the Debt Type(s) and other details regarding each Debt Type as required by the Department. This description(s) shall be submitted with the MOU and any other time a Participating Agency wants to submit a new Debt Type.

3.3 Submission of Debt.

- 3.3.1 All Data required to submit, certify, and maintain debt must be submitted electronically via a process designated by IDR. Submissions must comply with the file layout in Appendix B. IDR may update Appendix B without a formal amendment to this Agreement by providing written notice to the Participating Agency.
- 3.3.2 Participating Agency shall remain the system of record for Debt submitted to the Program.
- 3.3.3 **Character of Debt.**
 - 3.3.3.1 The Debt must be Qualifying Debt.

- 3.3.3.2 The Debt must be legally collectible and within any applicable statute of limitations.
- 3.3.3.3 The debts must meet the minimum amount requirement, as set by Iowa Administrative Code rule 701-26.1.
- 3.3.3.4 Obligor Information must include: Name (if individual, First and Last Name), tax identification number, and any other information requested by IDR.
- 3.3.4 Participating Agency must certify all Debt in accordance with Iowa Code section 421.65(2)(a)-(b).
- 3.3.5 All Debt is subject to a recertification process. The recertification process may include, but is not limited to, requiring the Participating Agency to certify that all information is correct and that the Debt is still Qualified Debt. The recertification process will be performed regularly, at the agreement of the Parties, but no less than annually.
- 3.3.6 Participating Agency shall notify the department of any change in the status of the public agency's individual debts submitted to the setoffs program. This notification shall be made no later than five business days of any change in the status of a submitted debt in the manner prescribed by the Department.
- 3.3.7 IDR may reject any Debt that, in IDR's sole judgment, is not feasible, not collectible, or not compliant with applicable law.
 - 3.3.7.1 IDR may reject any Debt if the tax identification number, or other information does not match IDR's record for the Obligor. This will only apply to Obligors of whom IDR has a record.

3.4 Setoff Procedure.

- 3.4.1 Debt will be setoff upon a TIN match.
- 3.4.2 The Debt Portal is intended to be available to the Participating Agency 24 hours a day, 7 days a week, with exceptions for Program maintenance. Participating Agency will be notified of any scheduled maintenance that will interfere with this availability. Unexpected interruptions in availability of the Debt Portal will be remedied by IDR as quickly as possible within IDR availability and priorities.
- 3.4.3 **Order of Priority for Debt Setoff.** Debt shall be setoff in the order of priority defined in Iowa Code section 421.65(4) and Iowa Administrative Code rule 701-26.6. The priority determination will be made when the challenge letter is sent to the obligor. A public payment will not be applied to a qualifying debt that is not included on the challenge notice.
 - 3.4.3.1 The Participating Agency shall identify in Appendix C Debts submitted to the Program that will be deposited into the state general fund.
- 3.4.4 **Setoff Fee.**
 - 3.4.4.1 The Participating Agency will be charged a Setoff Fee, as set forth in Iowa Administrative Code rule 701-26.10, each time a Public Payment is setoff and applied to the Participating Agency's Qualifying Debt. The Setoff Fee shall be retained as defined in section 3.6.7 herein.
 - 3.4.4.2 The Participating Agency shall not collect the Setoff Fee from the same setoff for which the Setoff Fee has been charged.
 - 3.4.4.3 IDR may change the Setoff Fee amount in IDR's sole discretion, upon 60 days' notice to the Participating Agency. Change to the Setoff Fee amount shall not require a formal amendment to this Agreement, nor consent of the Participating Agency.
- 3.4.5 **Upon Setoff.**
 - 3.4.5.1 IDR will mail a letter to the Obligor at the best address available to IDR at the time of mailing. The letter will inform the Obligor that the Public Payment owed to the Obligor was setoff due to Debt owed to the Participating Agency.
 - 3.4.5.2 IDR will mail a letter to a known co-payee on any setoff of a Public Payment. The letter will include information regarding the opportunity for the co-payee to request a

division of the Public Payment. This letter and the letter contemplated in section 3.4.5.1. may be combined.

- 3.4.5.3 The Obligor will have 15 days from the date of the letter to challenge the setoff. Ground for such challenges will be limited to: (1) mistake of fact, including a mistake in the identity of the obligor or a mistake in the amount owed, and (2) Debt is not a Qualifying Debt. Additionally, IDR will accept and administer requests to divide a jointly or commonly owned right to payment under Iowa Code section 421.65(2)(f).

3.5 Following Setoff

- 3.5.1 Amounts collected via a successful match will be forwarded periodically to the Participating Agency, reduced by the appropriate Setoff Fee.
- 3.5.2 Amounts collected will be posted to the balance due within the Program Debt Portal. If the amount of the debt is reduced as outlined in Iowa Administrative Code rule 701-26.2, the debt will be purged from the Program.
- 3.5.3 Amounts collected via a successful match will be forwarded to the Participating Agency via I/3 Internal Exchange Transaction (IET) or direct deposit. Transfer via check is not available.
- 3.5.4 If the application of a Public Payment to a Qualifying Debt results in an overpayment to the Participating Agency, and the Obligor does not challenge the setoff, the Participating Agency shall refund the overpayment to the Obligor and/or co-payee.
- 3.5.5 If, after the setoff is complete, it is determined that the person(s) whose Public Payment was setoff is not the Obligor, the Public Agency shall refund the setoff amount to the person(s) whose Public Payment was setoff.

3.6 Appeals, Challenges, and Requests to Divide Jointly or Commonly Owned Rights to Payment.

- 3.6.1 Challenges will be limited to: (1) mistake of fact, and (2) debt is not a qualifying debt. Additionally, IDR will accept and administer requests to divide a jointly or commonly owned right to payment. The Participating Agency is responsible for all appeals regarding the underlying debt.
- 3.6.2 If an appeal or challenge is filed, IDR shall notify the Participating Agency that a challenge has been received. The Participating Agency shall promptly provide IDR with all information requested by IDR or other information as deemed relevant by the Participating Agency for purposes of the challenge. The Participating Agency shall make every effort to provide such information to IDR prior to the hearing date. Information received by IDR more than 10 days after the challenge received date will not be considered by IDR.
- 3.6.3 Upon receipt of a challenge, IDR shall set a time to occur within ten days of receipt of the challenge to review the relevant facts of the challenge with the Obligor. An alternative time may be set at the request of the Obligor. Following the review, IDR shall determine whether the challenge is successful and communicate the result to the Participating Agency and the Obligor.
- 3.6.4 If a setoff is appealed or challenged by the Obligor, the Participating Agency shall hold the setoff amount until a final determination is made.
- 3.6.5 The Participating Agency must adhere to IDR's determination on a challenge or request for division of a jointly or commonly owned right to payment, and has no appeal opportunity.
- 3.6.6 Should the Obligor challenge IDR's determination or the Program in court (e.g. district court, etc.) Participating Agency shall be responsible for any defense, including costs. IDR may provide assistance upon request and at IDR's sole discretion.
- 3.6.7 IDR will retain the Setoff Fee, even if the challenge or request to divide a jointly or commonly owned right to payment is successful.

3.7 Refunds

- 3.7.1 In the event an appeal or divide is successful, or a request for divide is accepted, the Participating Agency is responsible for refunding the amount due to the Obligor or co-payee.
- 3.7.2 IDR may request the amount to be refunded to be returned to IDR, rather than refunded to the Obligor or co-payee, if another debt exists for the Obligor or co-payee in the Program. In

- such a case. the Participating Agency shall return the amount to IDR via I/3 Internal Exchange Transaction (IET) or Automated Clearing House (ACH) Debit.
- 3.7.3 If not notified to return the amount to IDR, the Participating Agency must issue the refund to the Obligor or co-payee within 30 days of notification of successful appeal or challenge, or the acceptance of a request for a divide by IDR.
- 3.7.4 The Participating Agency shall provide evidence that the refund was issued to IDR upon request.

ARTICLE IV CONFIDENTIALITY AND OWNERSHIP OF DATA

- 4.1 To the extent allowed by applicable law, the Participating Agency shall be considered the custodian of records related to the Debt and any Data submitted in relation to the Debt. Participating Agency shall respond to any open records request filed under chapter 22, regarding Participating Agency's Debt in the Program.
- 4.2 Obligor Information submitted to the Program is confidential and exempt from release under Iowa Code chapter 22. Iowa Code section 421.65(2)(a). Obligor Information is not confidential taxpayer information or return information under Iowa Code section 422.20 or 422.72.
- 4.3 IDR may use Obligor Information to support the Program generally. Obligor Information received from one participating agency or credit vendor may be used to assist the Program as it applies to any other participating agency or credit vendor.
- 4.4 Obligor Directory Information may be used to update IDR's tax information system, and will be used to benefit tax administration, non-tax debt collection, identification services, and the Program.
- 4.5 Notwithstanding Section 4.4 above, Obligor Information shall only be available to persons with a business reason to access the information.

ARTICLE V DURATION AND TERMINATION

- 5.1 **Duration.**
- 5.1.1 This Agreement shall be in force upon this document being fully signed (the "Effective Date").
- 5.1.2 The initial term of this Agreement shall be three (3) years from the Effective Date, unless terminated earlier. By mutual written agreement, the parties may annually extend the Agreement for up to three (3) additional one-year terms.
- 5.1.3 This Agreement memorializes all elements of this Agreement and supersedes any previous Agreement or negotiations related to this Agreement, whether oral or in writing. Amendments to the provisions of this Agreement may be made at any time only in writing and by the agreement and signature of all parties hereto.
- 5.2 **Termination.**
- 5.2.1 **Termination for Cause by IDR.** IDR may terminate this Agreement upon written notice of the Participating Agency's breach of any material term, condition, or provision of this Agreement, if such breach is not cured within the time period specified in IDR's notice of breach or any subsequent notice or correspondence delivered by IDR to Participating Agency, provided that cure is feasible. In addition, IDR 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:
- 5.2.1.1 Participating Agency, directly or indirectly, furnished any statement, representation, warranty, or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete;
- 5.2.1.2 Participating Agency's or Participating Agency Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has

committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

5.2.1.3 Dissolution of Participating Agency or any parent or affiliate of Participating Agency owning a controlling interest in Participating Agency;

5.2.1.4 IDR determines or believes Participating Agency has engaged in conduct that has or may expose IDR to material liability;

5.2.1.5 Participating Agency submits Debt that is not legally collectable, is unresponsive to IDR requests, or otherwise not compliant with this Agreement.

The right to terminate this Agreement pursuant to this section shall be in addition to and not exclusive of other remedies available to IDR and, notwithstanding any termination, IDR shall be entitled to exercise any other rights and pursue any remedies available under this Agreement, in law, at equity, or otherwise. Participating Agency shall notify IDR in writing if any of the foregoing events occur that would authorize IDR to immediately terminate this Agreement.

5.2.2 Termination for Convenience.

5.2.2.1 Following sixty days written notice, the Participating Agency 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 Participating Agency. Termination for convenience may be for any reason or no reason at all.

5.2.2.2 Following written notice, IDR 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 IDR. IDR may further remove all or any portion of Participating Agency's debt from the State Setoff Program for any or no reason upon written notice. Termination for convenience may be for any reason or no reason at all.

5.2.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, either party shall, upon written notice, have the right to terminate this Agreement, in whole or in part, without penalty or liability and without any advance notice as a result of any of the following:

5.2.3.1 The legislature, governor, or other applicable governing body fail, in the sole opinion of the terminating party, to appropriate funds sufficient to allow the terminating party to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement;

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

5.2.3.3 If the terminating party'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;

5.2.3.4 If the terminating party's duties, programs, or responsibilities are modified or materially altered; or

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

**ARTICLE IV
ADMINISTRATION**

6.1 This Agreement does not create a separate legal or administrative entity. Any real, personal, or intellectual property used in this cooperative undertaking shall be acquired, held, and disposed of by the Party which originally obtains, purchases, or develops the property.

- 6.2 During the Agreement period, the agreement managers shall be contacted on all interpretations and problems relating to the Agreement and shall follow the issues through to their resolution. The agreement managers shall also monitor performance under the Agreement. The Participating Agency agreement manager is identified in Appendix A. The IDR agreement manager is Susan Khamtanh, Procurement Officer, 515-281-5694, susan.khamtanh@iowa.gov. Agreement manager contact information may be updated without a formal amendment to this Agreement by providing written notice to the other Party.
- 6.3 Each Party represents and warrants that it has full authority to enter into this Agreement and that it has not granted and will not grant any right or interest granted to the other party under this Agreement to any person or entity.
- 6.4 **Additional Provisions.** The Parties agree that if an Appendix, Attachment, Addendum, Rider, or Exhibit is attached hereto by the Parties, and referred to herein, then the same shall be deemed incorporated herein by reference.
- 6.5 **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. Participating Agency understands that agreement to amendments may be required to continue participation in the Program. Failure to agree to amendments proposed by IDR may result in the termination of this Agreement and the removal of the Participating Agency’s debt from the Program.
- 6.6 **No Actions or Damages.** The Parties agree that neither party may file claims or seek damages under this Agreement.
- 6.7 **Compliance with Iowa Code Chapter 8F.** Participating Agency and IDR shall comply with Iowa Code Chapter 8F with respect to any sub-agreements or contracts it enters into pursuant to this Agreement. Any compliance documentation, including but not limited to certificates, received from contractors by Participating Agency or IDR shall be made available upon request of the other Party.
- 6.8 **Immunity from Liability.** Notwithstanding any provision of this Agreement, nothing in this Agreement shall be construed as waiving any immunity from suit or liability in state or federal court or any other tribunal, including but not limited to sovereign immunity, Eleventh Amendment immunity, or any other immunity from suits or damages, possessed by the Parties or any officer, employee, director, attorney, auditor, contractor, or associate of the Parties.
- 6.9 **Supersedes Former Contracts or Agreements.** This Agreement supersedes all prior Contracts or Agreements between Participating Agency and IDR for the services provided in connection with this Agreement.

Iowa Department of Revenue	
Signature	Date
Name:	
Title:	

[_____] (“Participating Agency”)	
Signature	Date
Name:	
Title:	

Appendix A

Participating is required to provide contact information for the following contacts. The Primary/Secondary for a particular type (e.g. operational, obligor) of contact may not be the same individual. However, the same individual may hold more than one contact position.

Operational Contact - Primary	
This is the primary contact for questions from IDR regarding the processing or operations of the Participating Agency's participation in the Setoff Program.	
Name:	
Title	
Phone Number:	
E-mail Address:	

Operational Contact - Secondary	
This is the backup contact for questions from IDR regarding the processing or operations of the Participating Agency's participation in the Setoff Program.	
Name:	
Title	
Phone Number:	
E-mail Address:	

Obligor Contact - Primary	
This is the primary contact for questions from Obligor.	
Name:	
Title	
Phone Number:	
E-mail Address:	

Obligor Contact - Secondary	
This is the backup contact for questions from Obligor.	
Name:	
Title	
Phone Number:	
E-mail Address:	

Agreement-Related Notices Should be Sent To:	
This is the contact who should receive legal notifications.	
Name:	
Title	
Phone Number:	
E-mail Address:	
Address:	
City:	
State:	
Zip Code:	

Appendix B

Setoff Placement File

The placement file must be named Setoffs#####.txt, where ##### is the Agency Number and Unit Code. If your agency has multiple Unit Codes, use one of them in the file name. Do not change the Unit Code used without notifying IDR prior to placement file submission.

The placement file must contain a list of all the Participating Agency's debt to be placed in the Program. Each record in the file represents one Debt. The placement file is a full replacement, and will overwrite existing debt placements for the Participating Agency under their unit code(s).

The placement file has a fixed width layout

Field Name	Characters	Description
Participating Agency Number (Required)	3	Unique identifier for the Participating Agency who maintains the debt. This is generally a three-digit number, such as "645" or "123", as assigned by IDR. Leading zeros are significant.
Participating Agency Unit Code (Required)	3	Unique identifier for a group within the Participating Agency, as assigned by IDR. This is generally a three-digit number such as "001" or "999". Leading zeros are significant.
Obligor Identification Number Type (Required)	1	Enter the code for the type of ID listed in Obligor ID. 1 = Social Security Number (SSN) 2 = Federal Employer Identification Number (FEIN) 3 = Individual Tax Identification Number (ITIN)
Obligor Identification Number (required)	9	Identification number unique to the Obligor (i.e. SSN, ITIN, or FEIN). Leading zeros are significant
Debt Identification Number (required)	30	Agency's unique identifier for the debt. (i.e. case #, invoice #, citation #, etc.). This should not change. Note: If debt has previously been placed for a combination of Agency Number, Agency Unit Code, Obligor ID, and Debt ID, then the corresponding placement will be updated based on the file.
Obligor Last Name / Entity Name (Required)	50	Last Name of the Obligor (if an Obligor Identification Number Type is SSN or ITIN), or Name of Obligor (if Obligor Identification Number Type is FEIN)
Obligor First Name	50	First name of the Obligor (if an Obligor Identification Number Type is SSN or ITIN). Leave blank if Obligor Identification Number Type is FEIN
Obligor Middle Name	50	Middle name of Obligor (if an Obligor Identification Number Type is SSN or ITIN)

		Leave blank if Obligor Identification Number Type is FEIN
Qualified Date (Required)	8	Date the Debt first qualified for the Program Format: MMDDYYYY
Debt Amount (Required)	12	The amount owed to the Participating Agency. Expressed in pennies. Pre-padded with 0s. Example: \$123.45 should be listed as 000000012345. Must be \$50 or more for all qualifying debts owed to one public agency by one obligor.
Description of Debt (May be required)	500	Description of the Debt. May be displayed on correspondence to the Obligor pertaining to their setoff. Example: "Parking Ticket 00123-4"

Appendix C

List of Debts submitted to the Program that will be deposited into the state general fund when paid:

Debt Type Name	Description
<i>ex. Individual income tax debt</i>	<i>ex. Debt resulting from the tax on an individual's income</i>