

CITIZEN ENGAGEMENT PLATFORMS

Led by the State of Utah

Master Agreement #: AR3764

Contractor: **TYLER TECHNOLOGIES, INC.**

Participating Entity: **STATE OF IOWA, DEPARTMENT OF MANAGEMENT –
OFFICE OF THE CHIEF INFORMATION OFFICER**

Scope and Participation:

1. Scope:

- ☒ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement.

Any scope exclusions specified herein apply only to this Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Utah and Contractor for Citizen Engagement Platforms. This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the Director of the Department of Management or their designee.

3. Term:

- ☒ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

4. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:

CONTRACTOR:

Name:	Tyler Technologies, Inc. – Roxanne Nydegger
Address:	One Tyler Way, Yarmouth, ME 04096
Telephone:	(913) 489-5218)
Fax:	
Email:	NASPO@tylertech.com

CITIZEN ENGAGEMENT PLATFORMS

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PARTICIPATING ENTITY:

Name:	Jessica Turba
Address:	200 E. Grand Avenue
Telephone:	(515) 321-6404
Fax:	N/A
Email:	Jessica.Turba@iowa.gov

Participating Entity Modifications and Additions to the Master Agreement

☒ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, subject to the terms and conditions set forth in the State of Iowa's Tyler Technologies Citizen Engagement Platforms Agreement #2023BUS0821 ("Iowa Agreement"). For the sake of clarity and avoidance of doubt, the order of priority set forth in the Iowa Agreement shall govern the relationship between Participating Entity, any Purchasing Entity, and Contractor for the sale of goods and/or services described herein

5. Subcontractors: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.
6. Orders: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing and other terms and conditions of, the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to the order.

CITIZEN ENGAGEMENT PLATFORMS

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IN WITNESS, WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

PARTICIPATING ENTITY

CONTRACTOR

Signature: 	Signature:  <small>Bill Van Asselt (May 14, 2024 16:47 CDT)</small>
Name: Kraig Paulsen	Name: William Van Asselt
Title: Director	Title: Deputy CLO
Date: 5-22-24	Date: 05/14/2024

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at ccc@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

**Iowa Department of Management
Contracts Declaration & Execution ("CD&E")**

Title of Contract: Tyler Technologies Citizen Engagement Platforms ("Agreement")		Contract Number: 2023BUS0821
State Agency's Name: Iowa Department of Management (" DOM ")		
Vendor's Name: Tyler Technologies Inc. (" Vendor ").		
Contract to Begin/Effective Date: Date of last signature below	Date of Expiration: September 14, 2026	Annual Extensions: Two optional one year extensions.
<p><u>Preamble.</u> This Agreement for Tyler Technologies Citizen Engagement Platforms is made and is effective as of the Effective Date, by and between the State of Iowa, acting by and through the Iowa Department of Management ("DOM"), and Tyler Technologies Inc., a Corporation organized under the laws of Maine ("Vendor"). The parties may be referred to herein individually as a "Party" or collectively as the "Parties"; provided, however, that where the context clearly requires, the term "Party" or "Parties" may refer to or include the Governmental Entity making individual purchase(s) hereunder.</p> <p><u>Documents Incorporated/Order of Precedence.</u> This Agreement and all attachments identified below are incorporated by this reference as if fully set forth herein and together comprise the terms and conditions governing the relationship between the Parties. In the event of any conflict or inconsistency between the various provisions of this Agreement and attachments to this Agreement, such conflict or inconsistency shall be resolved in the following order:</p> <ol style="list-style-type: none"> 1. First by giving preference to ancillary agreements unique to a Governmental Entity making purchases hereunder that specifically addresses state, local, or federal regulatory or compliance concerns and which may be incorporated via a Purchasing Instrument; 2. Second by giving preference to the following terms which are incorporated by this reference where and only to the extent required by the terms of a Purchasing Instrument issued under this Agreement: <ol style="list-style-type: none"> 2.1. The IT Business Associate Agreement ("BAA"), which may be updated from time to time to conform with applicable federal laws, a current version of which is available at: https://ocio.iowa.gov/document/20220224-baa-it. 		

- 2.2. The IT Qualified Service Organization ("QSO"), which may be updated from time to time to conform with applicable laws, a current version of which is available at: <https://ocio.iowa.gov/document/20220224-it-qso>
- 2.3. The contract language for general services and contract language for information technology services extracted from Exhibit 7 of IRS Publication 1075 which is available at: <https://ocio.iowa.gov/document/irs-pub1075-ex7>. The Attachment may only be amended if the Internal Revenue Service updates IRS Pub. 1075 Exhibit 7. If the Attachment is amended to conform with federal law, an updated version of the Attachment will be posted at the preceding link and electronic notice of the amended attachment will be provided to the Vendor. The Vendor shall be deemed to have accepted the amendment unless the Vendor provides notice of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days.;
3. Third by giving preference to the specific provisions of the Tyler Technologies Citizen Engagement Platforms General Terms and Conditions;
4. Fourth by giving preference to NASPO Contract Number AR3764 ("**NASPO Contract**"), available at <https://www.naspovaluepoint.org/portfolio/citizen-engagement-platforms/tyler-technologies/> issued and awarded by and through the State of Utah pursuant to Solicitation #KM21-47 ("**RFP**").
5. Fifth by giving preference to any Vendor product use terms, licensing agreements, or other Vendor specific terms and conditions attached or hyperlinked in Attachment A: Tyler Product Use Terms.
6. Sixth by giving preference to specific provisions of the RFP;
7. Seventh by giving preference to the Proposal;
8. Eighth by giving preference to the terms of any Purchasing Instruments executed hereunder.

Notes:

This Agreement does not guarantee any minimum level of purchases, usage, or compensation;

This Agreement is available to any Governmental Entity, including State Agencies and political subdivisions, in the State of Iowa;

Pursuant to Section 14.1, Governmental Entities making purchases hereunder may require Vendor, Vendor Contractors, or Vendor Personnel to execute ancillary agreements to address compliance, legal, confidentiality, and privacy concerns that may be unique to an applicable Governmental Entity.

[This section left intentionally blank]

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

Vendor: Tyler Technologies Inc.

By (Authorized Signature)


BTV Van Asselt (May 14, 2024 10:47 CDT)

Date Signed

05/14/2024

Printed Name and Title of Person Signing:

William Van Asselt, Deputy CLO

Address:

7701 College Blvd, Overland Park, KS 66210

State of Iowa, acting by and through the Iowa Department of Management:

By (Authorized Signature)



Date Signed

5-22-24

Printed Name and Title of Person Signing:

Kraig Paulsen, Director

Address:

State Capitol Building

1007 East Grand Avenue, Room G13

Des Moines, IA 50319

Iowa Department of Management
Tyler Technologies Citizen Engagement Platforms
General Terms and Conditions

1. Overview.

- 1.1. Purpose. This Agreement establishes the terms and conditions pursuant to which a Governmental Entity may procure the goods and services listed in the NASPO Contract.
- 1.2. Term. The initial term of this Agreement shall be as stated on the CD&E, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, DOM shall have the option to extend/renew this Agreement as stated on the CD&E. The initial term and any extensions and renewals shall be collectively referred to herein as the "**Term.**" The decision to extend or renew this Agreement shall be at the sole option of DOM and may be exercised by DOM by providing written notice to Vendor.
- 1.3. Relationship between this Agreement and Individual Purchasing Instruments. Each Purchasing Instrument executed hereunder shall be deemed, upon its execution, to be an Order under the terms of the NASPO Contract and to incorporate the terms and conditions of this Agreement and shall constitute a separate, distinct, and independent Agreement between Vendor and the applicable Governmental Entity. To the extent a Governmental Entity other than DOM makes a purchase hereunder pursuant to a Purchasing Instrument executed by it, such Governmental Entity shall be solely responsible for any payments due and duties and obligations otherwise owed Vendor under this Agreement. In addition, notwithstanding any other provision of this Agreement to the contrary, DOM bears no obligation or liability for any other Governmental Entity's losses, liabilities, or obligations, including Vendor's failure to perform, arising out of or relating in any way to this Agreement. Likewise, the State of Iowa generally bears no obligation or liability for any political subdivision or other non-State Entity's losses, liabilities, or obligations, including Vendor's failure to perform, arising out of or relating in any way to this Agreement.
- 1.4. Incorporation of NASPO Contract. Governmental Entities making purchases hereunder shall be afforded all of the rights, privileges, warranties, and indemnifications afforded the NASPO Cooperative, and such rights, privileges, warranties, and indemnifications shall accrue and apply with equal effect to Governmental Entities making purchases hereunder. Except as otherwise provided herein or in a Purchasing Instrument, Vendor shall perform all duties, responsibilities and obligations required under the NASPO Contract in the time and manner specified thereunder. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the NASPO Contract, such conflict or inconsistency shall be resolved as stated on the CD&E.

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

- 2.1. "**Acceptance**" means the Governmental Entity has determined a portion of the Deliverables satisfy its Acceptance Tests. "**Final Acceptance**" means the Governmental Entity has determined all Deliverables satisfy the Governmental Entity's Acceptance Tests. "**Non-acceptance**" means the Governmental Entity has determined that a portion of or all of the Deliverables have not satisfied the Governmental Entity's Acceptance Tests.

- 2.2. **"Acceptance Criteria"** means the Specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, or other criteria designated by the Governmental Entity and against which Acceptance Tests are conducted, including any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, the RFP, the Proposal, any Documentation, and any applicable state, federal, foreign, and local laws, rules, and regulations.
- 2.3. **"Acceptance Tests" or "Acceptance Testing"** means the tests, reviews, and other activities that are performed by or on behalf of the Governmental Entity to determine whether any or all Deliverables(s) meet Acceptance Criteria or otherwise satisfy the Governmental Entity, as determined by the Governmental Entity in its sole discretion.
- 2.4. **"Agreement,"** unless the context requires otherwise, means the collective documentation memorializing the terms of the agreement identified on the CD&E and all other attachments to the CD&E, accompanying the CD&E, or executed under or pursuant to the Agreement.
- 2.5. **"Authorized Contractors"** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by the Governmental Entity or any State Users to use, maintain, support, modify, enhance, host, or otherwise assist the Governmental Entity with any Deliverables(s) provided hereunder.
- 2.6. **"Confidential Information"** means, subject to any applicable federal, state, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party (**"Disclosing Party"**) to the other Party (**"Receiving Party"**) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent Third Party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency, or regulatory authority, or by applicable regulatory or professional standards and in compliance with section 11.5 of this Agreement; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.
- 2.7. **"Customer Data"** means all information, data, materials, or documents (including Confidential Information and Personal Data) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from the Governmental Entity, the State of Iowa, State Users, or Users, directly or indirectly, including from any Authorized Contractors of any of the foregoing, related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor in connection with any Customer-Owned Deliverables provided hereunder and all originals and copies of any of the foregoing.

- 2.8. **“Customer Property”** means any property, whether tangible or intangible, of or belonging to the Governmental Entity, including Customer Data and Customer-Owned Deliverables, software, hardware, programs, or other property possessed, owned, or otherwise controlled, maintained, or licensed by the Governmental Entity, including Third Party Software or Third Party Intellectual Property.
- 2.9. **“Customer-Owned Deliverables”** means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of the Governmental Entity or for a specific project under this Agreement, including 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, including any underlying Source Code and related Documentation. For the avoidance of doubt, “Customer Owned Deliverables” does not include the Source Code or Documentation related to SaaS services or other Vendor property provided under this Agreement.
- 2.10. **“Deficiency”** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related to a Deliverable(s), including any failure of a Deliverable(s), 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(s).
- 2.11. **“Deliverables”** means all of the goods, Software, work, work product, items, materials, and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with this Agreement including as may be more specifically identified, defined, and agreed upon in a Purchasing Instrument executed hereunder.
- 2.12. **“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel hereunder or otherwise related to or used in conjunction with any Deliverables(s), in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.
- 2.13. **“Enhancements”** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications, or other enhancements made to or with respect to the related Deliverables (including any new releases or versions related thereto) or other Deliverables provided or made available by Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, and all changes to any Documentation made by Vendor, directly or indirectly, as a result of such Enhancements.
- 2.14. **“Error”** means (i) with respect to any Deliverable(s) any defect, flaw, error, bug, or problem of any kind, or any failure of the Deliverable(s) to conform to an applicable Specification.
- 2.15. **“Error Correction”** means either a modification, procedure, or routine that corrects an Error in all material respects.

- 2.16. **“Finally Determined”** means when a claim or dispute has been finally determined by a court of competent jurisdiction or other agreed-upon governing body and either (a) no associated appeal has timely been sought if capable of being sought, or (b) any and all appellate rights properly exercised have otherwise been exhausted.
- 2.17. **“Governmental Entity”** means any governmental entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity includes the Executive Branch, Legislative Branch, Judicial Branch, agencies, independent agencies, 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, including political subdivisions or other local governmental entities.
- 2.18. **“I.T. Governance Document(s)” or “Governance Document(s)”** means any Information Technology policies, standards, processes, guidelines, or procedures developed by the DOM or, as applicable, by the Governmental Entity.
- 2.19. **“DOM”** means the Department of Management of the State of Iowa established by Iowa Code chapter 8, and Iowa Code chapter 8B.
- 2.20. **“Personal Data”** means any information relating to an identified or identifiable person, including, but not limited to, Social Security or other government-issued identification numbers, account security information, financial account information, credit/debit/gift or other payment card information, account passwords, intellectual property, document identification number, and sensitive or personal data (or equivalent terminology) as defined under any law, statute, directive, regulation, policy, standard, interpretation, order (including any and all legislative or regulatory amendments or successors thereto) regarding privacy, data protection, information security obligations, or the processing of personal data. For the avoidance of doubt, Personal Data shall include:
- 2.20.1. **“Federal Tax Information” or “FTI,”** as defined by Internal Revenue Service (“IRS”) Publication 1075 (“**Pub 1075**”), available at <https://www.irs.gov/pub/irs-pdf/p1075.pdf>, and corresponding Internal Revenue Code (“IRC”) rules and regulations;
- 2.20.2. Any data or information covered under or protected by Iowa Code chapter 715C; and
- 2.20.3. Any data or information covered under or protected by Iowa Code sections 422.20 and 422.72.
- For purposes of this definition and this Agreement, **“Process” or “Processing” or “Processed”** shall mean any operation or set of operations performed upon the Personal Data, whether or not by automatic means, including collection, recording, organization, use, transfer, disclosure, storage, manipulation, combination, and deletion of Personal Data.
- 2.21. **“Proposal” or “Vendor’s Proposal”** means Vendor’s Response to the RFP.
- 2.22. **“Purchasing Instrument”** means an individual transactional document executed hereunder for the purchase of Services or Deliverable(s) pursuant to this Agreement, including a **“Purchase Order” or “Statement of Work”** executed hereunder (see the Sample Purchasing Instrument/Statement of Work attached hereto for a sample Statement of Work), regardless of form, and which identifies the specific Services or Deliverable(s)

to be purchased and any Acceptance Criteria or Specifications related thereto. Each Purchasing Instrument entered hereunder shall be deemed an "Order" under the terms of the NASPO Contract.

- 2.23. **Reserved**
- 2.24. **"Request for Proposal" or "RFP"** means the Request for Proposal identified on the CD&E, including any attachments or amendments thereto.
- 2.25. **"Security Breach"** means the unauthorized acquisition of or access to Customer Data or related Deliverables by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data or related Deliverables, including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. **"Security Breach"** shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.
- 2.26. **"Services"** Any services within the scope of the RFP and Proposal, including services considered Value-Added Services, including as may be further defined, described, and agreed upon by the Parties in a Purchasing Instrument executed hereunder.
- 2.27. **"Software"** means any and all other software, programs, applications, modules, and components, in object code form, all related Documentation, Enhancements, and Source Code, and all copies of the foregoing.
- 2.28. **"Source Code"** means the human-readable source code, source program, scripts, or programming language, including, but not limited to, HTML, XML, XHTML, Visual Basic, and JAVA, for or related to any Software. Source Code includes all source code listings, instructions (including compile instructions), programmer's notes, commentary, and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.
- 2.29. **"Special Terms and Conditions"** means any attachment hereto entitled, in whole or in part, **"Special Terms and Conditions."**
- 2.30. **"Specifications"** means any and all specifications, requirements, technical standards, performance standards, representations, warranties, criteria, and other specifications related to any Deliverable(s) described or stated in this Agreement (including any exhibit or documentation attached to, or provided in connection with, this Agreement), any Purchasing Instrument(s), the RFP, the Proposal, and, solely to the extent not inconsistent with the foregoing, the Documentation.
- 2.31. **"State Users"** means the State of Iowa, DOM, and any other Governmental Entity as may be later designated by the Governmental Entity executing Purchasing Instruments hereunder in its sole discretion and communicated to Vendor in writing, and any employees or Authorized Contractors of any of the foregoing.
- 2.32. **"Third Party"** means a person or entity (including any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.
- 2.33. **"Third Party Intellectual Property"** shall mean intellectual property, including Third Party Software, licensed, made, conceived, or developed by a Third Party and provided or used by or on behalf of the Governmental Entity or Vendor, as applicable, including:

- 2.33.1. As it relates to intellectual property provided to the Governmental Entity by Vendor, intellectual property comprising or embedded in the Deliverables provided by Vendor under this Agreement.
- 2.33.2. As it relates to intellectual property provided to Vendor by the Governmental Entity, intellectual property comprising or embedded in any Customer Property,
- 2.34. **"Third Party Software"** means any software owned or licensed by a Third Party.
- 2.35. **"Value-Added Services"** means products, equipment, hardware, Software, or services the Governmental Entity procures through Vendor or Vendor Contractors, directly or indirectly, hereunder, including goods or services:
 - 2.35.1. Which may have been expressly identified in the RFP or Proposal as optional goods or services available for purchase hereunder; or
 - 2.35.2. Which are otherwise generally deemed incidental to the total transaction.
- 2.36. **"Vendor"**, in addition to its meaning in the CD&E, shall, unless the context clearly requires the contrary, be deemed to include Vendor Contractors and Vendor Personnel.
- 2.37. **"Vendor Personnel"** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Services or Deliverables under this Agreement.
- 2.38. **"Vendor Contractor(s)"** means any of Vendor's authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Services or Deliverables under this Agreement.

3. Services and Deliverables.

3.1. Performance.

- 3.1.1. *Generally.* Vendor shall commence, complete, and deliver all work and provide all Services or Deliverables as defined by this Agreement and/or any Purchasing Instrument(s) executed by a Governmental Entity hereunder.

3.1.2. *Purchasing Instruments.*

- 3.1.2.1. *Generally.* Governmental Entities and Vendor may execute individual Purchasing Instrument(s) identifying specific Services or Deliverables to be purchased and provided hereunder and defining related Acceptance Criteria, Specifications, or terms and conditions associated with the performance and provisioning of such Services or Deliverables. Individual Purchasing Instruments will be effective and become valid and enforceable only when signed by both the Governmental Entity and Vendor. Once a Purchasing Instrument has been executed, Vendor will carry out and complete the duties and responsibilities set forth in the applicable Purchasing Instrument in accordance with the terms, conditions, requirements, Specifications, and Acceptance Criteria set forth in this Agreement, including any Special Terms and Conditions, the Purchasing Instrument, the RFP, the Proposal, and any Service Level Agreement or any related attachments or documents attached hereto or

associated herewith, including a "project plan(s)" or other similarly captioned document.

- 3.1.2.2. *Amendments to Purchasing Instruments.* A Purchasing Instrument may be amended at any time during the Term upon the mutual written consent of Vendor and the applicable Governmental Entity.

3.1.3. *Delivery.*

- 3.1.3.1. *Risk of Loss.* To the extent any Deliverable(s), including any hardware or equipment, are mailed or shipped, Vendor or Vendor Contractors shall bear all freight, shipping, handling, and insurance costs for the delivery and shall bear all risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.

- 3.1.3.2. *Documentation.* Vendor acknowledges and agrees that it or Vendor Contractors shall, at no charge to the Governmental Entity, deliver and provide to the Governmental Entity all Documentation related to the Services or Deliverable(s) that are created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, unless otherwise agreed to by the Governmental Entity in writing.

4. Compensation and Additional Rights and Remedies.

- 4.1. Pricing/Compensation. The fees for the Services, Deliverables shall be in accordance with the RFP, Proposal and as set forth in the applicable Purchasing Instrument(s). Failure of the Governmental Entity to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of any Services or Deliverables, so long as payment of such undisputed fees is made within the applicable cure period. For the avoidance of doubt, in the event of any dispute related to fees, Vendor shall continue to perform and provide Services and Deliverables, until such dispute has been Finally Determined by a court of competent jurisdiction or other agreed-upon governing body.
- 4.2. No Additional Fees. Other than as permitted by Section 4.1 (Pricing/Compensation), the Governmental Entity 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 Purchasing Instrument(s). For the avoidance of doubt, there shall be no reimbursable expenses associated with this Agreement, and Vendor shall be solely responsible for all other costs, charges, and expenses it incurs in connection with this Agreement, including equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, travel and lodging, and all other operational and administrative costs and expenses.
- 4.3. Payment does not Imply Acceptance. Payment, including final payment, shall not be construed as acceptance of any Services or Deliverables with Deficiencies, Errors, 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 Governmental Entity 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 Governmental Entity.

- 4.4. Invoices. Upon receipt of written notice of Acceptance from the Governmental Entity with respect to one or more Services or Deliverable(s), or in the frequencies set forth in the applicable Purchasing Instrument Vendor shall submit an invoice to the Governmental Entity requesting payment of the fees or other compensation to which it is entitled under Section 4.1(Pricing/Compensation), less any Retained Amount(s) to be withheld in accordance with Section 4.5 (Retention) or other applicable offsets. 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 Governmental Entity. The Governmental Entity shall verify Vendor's performance/provisioning of Services or Deliverable(s) outlined in the invoice before making payment. The Governmental Entity shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code section 8A.514 and corresponding implementing rules, regulations, and policies. The Governmental Entity may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Governmental Entity shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Governmental Entity believes the invoice is inaccurate or incorrect in any way. Notwithstanding, the Participating Governmental Entity, in its sole discretion, may elect to prepay fees for services and deliverables in accordance with applicable laws, rules, policies, and procedures, including State of Iowa Accounting Policies and Procedures, available at: <https://das.iowa.gov/state-accounting/sae-policies-procedures-manual>.
- 4.5. Retention. To secure Vendor's performance under this Agreement, the Governmental Entity may retain a percentage to be agreed upon of the fees or other compensation associated with each Deliverable provided under a Purchasing Instrument ("**Retained Amounts**") until all Deliverables under such Purchasing Instrument have been supplied/provided and the Governmental Entity has given its Final Acceptance. Retained Amounts shall be payable upon the Governmental Entity's delivery of written notice of Final Acceptance, subject to the terms and conditions hereof.
- 4.6. Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Governmental Entity the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Vendor or notification by the Governmental Entity of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Governmental Entity under this Section 4.6 (Erroneous Payments and Credits), the Governmental Entity may charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount otherwise allowed by law, whichever is greater. The Governmental Entity may, in its sole discretion, elect to have Vendor apply any amounts due and owing the Governmental Entity under this Section 4.6 (Erroneous Payments and Credits) against any amounts payable by the Governmental Entity under this Agreement.
- 4.7. Set-off Against Sums Owed by Vendor. In the event Vendor owes the Governmental Entity any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Governmental Entity may set off such sum against any sum invoiced to the Governmental Entity by Vendor in the Governmental Entity's sole

discretion. Any amounts due the Governmental Entity as damages may be deducted by the Governmental Entity from any money or sum payable by the Governmental Entity to Vendor pursuant to this Agreement or any other agreement between Vendor and the Governmental Entity.

- 4.8. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Governmental Entity may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the Governmental Entity or work stoppage by Vendor, in the event the Governmental Entity determines:

- 4.8.1. Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or
- 4.8.2. Any Deliverable has failed to meet or conform to any applicable Acceptance Criteria or Specification(s) or contains or is experiencing a material Deficiency or Error(s).

No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Governmental Entity under this Agreement. Prior to withholding any payment as permitted hereunder, Vendor shall be provided written notice and thirty (30) days to cure or correct the failed performance, Deficiency(ies), or Errors.

- 4.9. Correction/Cure. The Governmental Entity may correct any Deficiencies or Errors with respect to any Deliverable(s) or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies or Errors as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the Governmental Entity. The Governmental Entity may procure the Deliverable(s) reasonably necessary to correct any Deficiencies or Errors or cure any Vendor default, in which event Vendor shall reimburse the Governmental Entity for the actual costs incurred by the Governmental Entity for such Deliverable(s) or cure, including the reasonable value of the time expended by the Governmental Entity's personnel or its Authorized Contractors to secure substitute Deliverable(s) or cure such default. In addition, Vendor shall cooperate with the Governmental Entity or any Third Parties retained by the Governmental Entity which assist in curing such default, including by allowing access to any pertinent materials, work product, or intellectual property of Vendor's.

- 4.10. Error Correction. With respect to each notice from the Governmental Entity to Vendor during the Term that notifies Vendor that any Deliverable(s) provided by Vendor, including those previously accepted by the Governmental Entity, contains or experiences a Deficiency or Error, Vendor shall, at no cost to the Governmental Entity, promptly:

- 4.10.1. Correct the Deficiency or Error and repair the affected Deliverable(s), and
- 4.10.2. Provide the Governmental Entity with all necessary and related materials related to such repaired or corrected Deliverable(s) including, to the extent applicable, the provision of new Source Code, master program disks, or other media acceptable to the Governmental Entity, and related Documentation.

- 4.11. Repayment Obligation. In the event that any State of Iowa or federal funds are deferred or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, Vendor will be liable to the Governmental Entity for the full amount of any claim disallowed (or the amount of funds expended in violation of such applicable laws) and for all related penalties incurred. If the State of Iowa or any federal

agency concludes Vendor has been paid for any cost that is unallowable, unallocable, or unreasonable under this Agreement, Vendor will be liable to the Governmental Entity for such cost. Vendor shall pay to the Governmental Entity all amounts for which the Vendor is liable under this Section 4.11 (Repayment Obligation) within ten (10) business days of receiving the Governmental Entity's written demand or written notice. The Governmental Entity may withhold any payment under this Agreement if Vendor fails to timely make any payment required by this Section 4.11 (Repayment Obligation).

- 4.12. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 4 (Compensation and Additional Rights and Remedies) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.
- 4.13. Administrative Fees. Without affecting the prices/rates, Vendor is authorized to charge the Governmental Entity hereunder, Vendor shall provide to DOM a 1.00% administrative fee on the sales made by and through this PO. This 1.00% administrative fee shall be paid quarterly to:

Attn: Business Services Division Administrator

Iowa Department of Management

200 E Grand Ave.

Des Moines, IA 50309

Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

5. Acceptance Tests, Project Management, and Program Management.

- 5.1. Acceptance Testing. All Deliverables, shall be subject to the Governmental Entity's Acceptance Testing and Acceptance, as may be further described in a Purchasing Instrument(s). Upon completion of all work to be performed by Vendor with respect to any Deliverable or group of Deliverables, Vendor shall deliver a written notice to the Governmental Entity certifying that the foregoing meets and conforms to applicable Acceptance Criteria and is ready for the Governmental Entity to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable(s), to determine that it meets and operates in accordance with applicable Acceptance Criteria prior to delivering such notice to the Governmental Entity. At the Governmental Entity's request, Vendor shall assist the Governmental Entity in performing Acceptance Tests at no additional cost to the Governmental Entity. Within a reasonable period of time after the Governmental Entity has completed its Acceptance Testing, the Governmental Entity shall provide Vendor with

written notice of Acceptance or Non-acceptance with respect to each Deliverable, or any portion thereof, evaluated during such Acceptance Testing. If the Governmental Entity determines that a Deliverable(s), in whole or in part, satisfies its Acceptance Tests, the Governmental Entity shall provide Vendor with notice of Acceptance with respect to such Deliverable(s). If the Governmental Entity determines that a Deliverable(s), in whole or in part, fails to satisfy its Acceptance Tests, the Governmental Entity shall provide Vendor with notice of Non-Acceptance with respect to such Deliverable(s). In the event the Governmental Entity provides notice of Non-Acceptance to Vendor with respect to any Deliverable(s), Vendor shall correct and repair such Deliverable(s), and submit it to the Governmental Entity within ten (10) days of Vendor's receipt of notice of Non-acceptance so the Governmental Entity may re-conduct its Acceptance Tests with respect to such Deliverable(s). In the event the Governmental Entity determines after re-conducting its Acceptance Tests such Deliverable(s) continue to fail to satisfy its Acceptance Tests, then the Governmental Entity shall have the continuing right, at its sole option, to:

- 5.1.1. Require Vendor to correct and repair such Deliverable(s) within such period of time as the Governmental Entity may specify in a written notice to Vendor;
- 5.1.2. Refuse to accept such Deliverable(s), without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such Deliverable(s) or receive a refund of any fees or amounts already paid with respect to such Deliverable(s);
- 5.1.3. Accept such Deliverable(s) on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Governmental Entity's satisfaction, the Deficiencies or Errors present therein and any reduced value or functionality of such Deliverable(s) or the costs likely to be incurred by the Governmental Entity to correct such Deficiencies or Errors; or
- 5.1.4. Terminate the applicable Purchasing Instrument or seek any and all available remedies, including damages. Notwithstanding any other provisions of this Agreement related to termination, the Governmental Entity may terminate a Purchasing Instrument in its entirety pursuant to this Section 5.1.4 without providing Vendor any notice or opportunity to cure.

The Governmental Entity's right to exercise the foregoing rights and remedies, including termination of the applicable Purchasing Instrument, shall remain in effect until Acceptance Tests are successfully completed to the Governmental Entity's satisfaction and the Governmental Entity has provided Vendor with written notice of Final Acceptance. 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 Governmental Entity's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any Deficiency or Error 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 Governmental Entity of its right to refuse to provide notice of Final Acceptance.

5.2. Project Management and Reporting.

- 5.2.1. *Vendor or Project Manager.* Vendor shall designate, in writing, a Project Manager acceptable to the Governmental Entity. Vendor will assign a Project Manager of a management level sufficient to ensure timely responses from all Vendor Personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the

Governmental Entity prior to his or her appointment as Vendor's Project Manager. Vendor represents and warrants 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 for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her or him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Governmental Entity's site as needed during the course of work and will be available either in person, by telephone, or by email to respond promptly during the business day to inquiries from the Governmental Entity.

5.2.2. *Review Meetings.* Vendor's Project Manager shall meet weekly with the Governmental Entity's project manager and representatives, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor or performance issues. At each review meeting, Vendor's Project Manager shall provide a status report, which shall include, at minimum, the information described in Section 5.2.3 (Reports) and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, 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 of this Agreement.

5.2.3. *Reports.* Vendor shall provide the Governmental Entity with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Services or 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 Governmental Entity may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Governmental Entity's approval.

5.2.4. *Problem Reporting Omissions.* The Governmental Entity'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 the Governmental Entity may have. The Governmental Entity's failure to identify the extent of a problem, Deficiency, or Error, or the extent of damages incurred as a result of a problem, Deficiency, or Error, shall not act as a waiver of performance or constitute Acceptance under this Agreement.

6. **Limitation of Liability.** If the NASPO Contract or any Related Agreements contain any provision(s) limiting Vendor's liability or providing for sole and exclusive remedies, any such provision(s) shall be superseded by or subject to the following, as applicable: Notwithstanding anything in the NASPO Contract or any Related Agreements to the contrary, and solely to the extent permitted by applicable laws, rules and regulations: (a) the maximum liability of either Party, including the Participating Governmental Entity, for direct damages shall be one times the Contract Value ("**Contract Value**" is defined as the aggregate total compensation to be paid by the customer/State of Iowa under the terms of the applicable Purchasing Instrument for the entire term, including all renewals and extensions); and (b) neither Party, including the Participating Governmental Entity, shall be liable to the other for consequential, incidental, indirect, special, or

punitive damages; provided, however, under no circumstances shall the foregoing limitations or any other provision in the NASPO Contract or any Related Agreement that either limits Vendor's liability or provides for sole or exclusive remedies apply to any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:

- 6.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;
- 6.2. Death, bodily injury, or damage to real or tangible personal property;
- 6.3. Any contractual obligations of Vendor pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws; and/or confidential information;
- 6.4. Claims arising under the NASPO Contract or any Related Agreements calling for indemnification of the State or for third-party claims against the State for bodily injury to persons or for damage to real or tangible personal property caused by Vendor's negligence or willful conduct.

Notwithstanding anything in the NASPO Contract or any Related Agreements to the contrary, nothing in the NASPO Contract or any Related Agreements shall be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State of Iowa or any State of Iowa governmental entities making purchases by leveraging the NASPO Contract, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise.

7. Ownership and Intellectual Property.

- 7.1. Ownership of Vendor-Owned Deliverables. Except as specifically granted in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Vendor shall own all Deliverables that were independently and exclusively developed by Vendor prior to the Effective Date of this Agreement ("**Vendor-Owned Deliverables**").
- 7.2. Ownership and Assignment of Customer-Owned Deliverables. Upon Vendor receiving full payment as set forth in the Purchasing Instrument but subject to any applicable right to withhold, set-off, retain, or otherwise deny payment hereunder (including as permitted by Section 4.5 (Retention), 4.7 (Set-off Against Sums Owed by Vendor), and 4.8 (Withholding Payments)), Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably assigns, transfers, and conveys to the Governmental Entity all right, title and interest in and to Customer-Owned Deliverables. Vendor represents and warrants that the Governmental Entity shall acquire good and clear title to all Customer-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 Vendor Contractors and Vendor Personnel. Vendor, Vendor Contractors, and Vendor Personnel shall not retain any property interests or other rights in or to Customer-Owned Deliverables and shall not use any Customer-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Governmental Entity commissioning such Deliverables and the payment of such royalties or other compensation as the Governmental Entity deems appropriate. Immediately upon the request of the Governmental Entity, Vendor will deliver to the Governmental Entity or destroy, or both, at the Governmental Entity's option, all copies of any Customer-Owned Deliverables in the possession of Vendor.

- 7.3. Waiver. To the extent any of Vendor's, Vendor Contractor's, or any Vendor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights or any rights of attribution or integrity, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the Governmental Entity's rights in and to Customer-Owned Deliverables.
- 7.4. Acknowledgement. Vendor acknowledges and agrees that the Governmental Entity, as owner and assignee of Customer-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation:
- 7.4.1. Obtain, secure, file, and apply for any legal protection necessary to secure or protect any rights in and to Customer-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto;
 - 7.4.2. Adapt, change, modify, edit, or otherwise use Customer-Owned Deliverables as the Governmental Entity sees fit, including in combination with the works of others, prepare derivative works based on Customer-Owned Deliverables, and publish, display, perform, host, and distribute throughout the world any Customer-Owned Deliverable(s) in any medium, whether now known or later devised, including any digital or optical medium; and
 - 7.4.3. Make, use, sell, license, sublicense, lease, or distribute Customer-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party, including Vendor Contractors or Vendor Personnel.
- 7.5. Further Assurances. At the State of Iowa's or Governmental Entity'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 State of Iowa or Governmental Entity to:
- 7.5.1. Establish, perfect, or protect the Governmental Entity's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers, and conveyances set forth in Section 7.2 (Ownership and Assignment of Customer-Owned Deliverables); and
 - 7.5.2. 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 Governmental Entity is unable, after reasonable effort, to secure Vendor's, Vendor Contractor's, or any Vendor Personnel's signature on any letters patent, copyright, or other analogous protection relating to the Customer-Owned Deliverables, for any reason whatsoever, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably designates and appoints the Governmental Entity and its duly authorized officers, employees, and agents, as their 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.

- 7.6. Third Party Intellectual Property. Except as otherwise agreed to by the Parties in writing, in the event a Deliverable(s) is comprised of Third Party Intellectual Property, Vendor shall provide whatever license it is able to obtain from the Third Party and provide it to the State. Vendor agrees to identify Third Party Intellectual Property in the Purchasing Instrument and work with the Governmental Entity to facilitate the negotiation of any necessary license agreement, the terms and conditions of which are acceptable to the agency, where feasible. Notwithstanding the foregoing, Vendor's failure to obtain or provide proof of license from a Third Party shall not be read to release Vendor from any representations, warranties, indemnities or other contractual protections extended to the Governmental Entity elsewhere in this Agreement.
- 7.7. Rights of the Federal and State Government. If all or a portion of the funding used to pay for Customer-Owned 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 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 Customer-Owned Deliverables developed under this Agreement and the copyright in and to such Customer-Owned Deliverables.
- 7.8. Customer Property. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement and in compliance with Governmental Entity's security and confidentiality requirements. Customer Property shall at all times remain the property of the Governmental Entity or applicable Third Party owning Customer Property that has been licensed to the Governmental Entity. Vendor, Vendor Contractors, Vendor Personnel or related Deliverables shall comply with any and all the license terms, conditions, or restrictions applicable to any Customer Property that has been licensed to the Governmental Entity or otherwise made available or accessible to the Governmental Entity or Vendor by a Third Party, including to the extent related Deliverables must interface, integrate, or connect to such Customer Property. Vendor shall indemnify and hold harmless the Governmental Entity and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs, and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Vendor's, Vendor Contractor's, or Vendor Personnel's, or related Deliverables breach of any license terms, conditions, or restrictions applicable to, or violation or misappropriation of any intellectual property rights or interests in, any Customer Property that has been licensed to the Governmental Entity or otherwise made available or accessible to the Governmental Entity or Vendor by a Third Party.
- 7.9. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 7 (Ownership and Intellectual Property) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.

8. Representations, Warranties, and Covenants.

- 8.1. Deliverables Free of Deficiencies. Vendor represents and warrants that the Deliverables, in whole and in part, shall: (i) be free from material Deficiencies and Errors; and (ii) meet, conform to and operate in accordance with all Acceptance Criteria and in accordance with

this Agreement. During the Term, Vendor shall, within ten (10) days of receiving notice of such Deficiencies, Errors, or failures from the Governmental Entity and at its expense, repair, correct, or replace any Deliverable(s) that contains or experiences material Deficiencies or Errors or fails to meet, conform to, or operate in accordance with Acceptance Criteria or Specification(s). The foregoing shall not constitute an exclusive remedy under this Agreement, and the Governmental Entity shall be entitled to pursue any other available contractual, legal, or equitable remedies. Vendor shall be available at all reasonable times to assist the Governmental Entity with questions, problems, and concerns about the Deliverable(s); to inform the Governmental Entity promptly of any known Deficiencies or Errors in any Deliverable(s); repair and correct any Deliverable(s) not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable(s) may have been accepted by the Governmental Entity; and provide the Governmental Entity with all necessary materials and any related Services with respect to such repaired or corrected Deliverable(s). Acceptance Testing will not in any way relieve Vendor of its responsibilities to correct any material Deficiency or Error.

- 8.2. Quiet Enjoyment. Vendor represents and warrants that: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide Deliverables to the Governmental Entity hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed the Governmental Entity hereunder without violating any rights of any Third Party; (ii) it 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 Governmental Entity herein; and (iii) the Governmental Entity shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption, or interruption.
- 8.3. Intellectual Property. Vendor represents and warrants that: (i) the Deliverables and all intellectual property rights therein and related thereto; and (ii) the Governmental Entity'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 any Deliverables. Vendor shall inform the Governmental Entity 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, Vendor shall, at the Governmental Entity's request and at Vendor's sole expense: (i) procure for the Governmental Entity the right or license to continue to use the Deliverable(s) at issue, or relevant aspect thereof; (ii) replace the infringing, violating, or misappropriated aspects of such Deliverable(s) with a functionally equivalent replacement; (iii) modify or replace the affected portion of the Deliverable(s), the with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable(s) at issue and refund to the Governmental Entity all fees, charges, and any other amounts paid by the Governmental Entity under this Agreement or any related agreement with respect to such Deliverable(s). In addition, Vendor agrees to indemnify and hold harmless the Governmental Entity and its 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 8.3 (Intellectual Property). The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Governmental Entity under this Agreement or otherwise and shall survive termination of this Agreement.

- 8.4. Workmanlike Manner. 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 conditions 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 Governmental Entity notifies Vendor of any Services performed in violation of this standard, Vendor shall re-perform the Services at no cost to the Governmental Entity, such that the Services are rendered in the above-specified manner, or if Vendor is unable to perform the Services as warranted, Vendor shall reimburse the Governmental Entity any fees or compensation paid to Vendor for the unsatisfactory Services.
- 8.5. Compliance with Law. Vendor represents, warrants, covenants, and promises that Vendor, Vendor Contractors, and Vendor Personnel have complied with, and shall continue to comply, and, to the extent applicable, the Deliverables comply with all applicable federal, state, foreign, and local laws, rules, regulations, codes, standards, ordinances, and orders both generally and in connection with the performance of this Agreement, including the following:
 - 8.5.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and corresponding rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the Governmental Entity's written request, Vendor shall submit to the Governmental Entity a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
 - 8.5.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
 - 8.5.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
 - 8.5.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
 - 8.5.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.1, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
 - 8.5.6. All applicable I.T. Governance Document(s).
 - 8.5.7. To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the federal government, any terms or conditions

required to be included in a contract between the Governmental Entity and a contractor pursuant to applicable federal laws, regulations, circulars, and bulletins, which terms and conditions are incorporated by reference into this Agreement as if fully set forth herein and contractual obligations of Vendor.

8.5.8. IRS Pub 1075.

8.5.9. Iowa Code sections 422.20 and 422.72.

Vendor shall take such steps as necessary to ensure Vendor Contractors and Vendor Personnel are bound by the terms and conditions contained in this Section 8.5 (Compliance with Law). Notwithstanding anything in this Agreement to the contrary, Vendor, Vendor Contractors, and Vendor Personnel's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Agreement the Governmental Entity may cancel, terminate, or suspend, in whole or in part, this Agreement or any Purchasing Instruments executed hereunder. In addition, the Governmental Entity may declare Vendor or Vendor Contractors ineligible for future Governmental Entity contracts in accordance with authorized procedures or Vendor or Vendor Contractors may be subject to other sanctions as provided by law or rule.

- 8.6. No Conflicts. Vendor represents, warrants, and covenants that no relationship existed at the time of the formation of this Agreement, or will exist during the Term of the Agreement, between Vendor, Vendor Contractors, or Vendor Personnel and the Governmental Entity or the State of Iowa or any of its employees or Authorized Contractors that is or may constitute a conflict of interest or appearance of impropriety, or that would conflict in any manner or degree with the performance of its obligations under this Agreement. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement and any Purchasing Instruments executed hereunder, and Vendor, Vendor Contractors, and Vendor Personnel shall not engage in or permit any Third Party to engage in any conduct that would violate that chapter.
- 8.7. Up to Date on Payments. Vendor represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the State of Iowa, including the payment of taxes and employee benefits, and covenants and warrants it will not become so during the Term, or any extensions thereof.
- 8.8. Documentation. Vendor represents, warrants, and covenants that during the Term, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains, and the Documentation will enable the Governmental Entity to use such Deliverable(s) for their intended purposes.
- 8.9. Preservation of Implied Warranties. 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 Services, Deliverables to be provided, or by provision of samples to the Governmental Entity, shall not be construed as limiting or negating any warranty provided by law, including 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 Services, Deliverables provided by Vendor or performance or provisioning thereof.
- 8.10. Cumulative Warranties. Except to the extent otherwise provided herein, Vendor's warranties provided in this Section 8 (Representations, Warranties, and Covenants) are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent

and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Governmental Entity.

- 8.11. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this section shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.

9. Indemnification.

Vendor. Notwithstanding anything in the NASPO Contract or any Related Agreements to the contrary, any right or obligation of Vendor to defend the Participating Governmental Entity or State of Iowa, or any of their employees, officers, board members, agents, representatives, officials, or other like individuals, shall be deleted and/or replaced and superseded solely with an obligation to indemnify and hold harmless the Participating Governmental Entity or State of Iowa, including its employees, officers, board members, agents, representatives, officials, or other like individuals ("**State Indemnitees**"). from and against any and all damages, losses, settlements, judgments, fines, penalties, costs, and any other reasonable expenses (including 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 related to this Agreement, including any claims 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, directly or indirectly, of any statement, representation, warranty, or certification in connection with this Agreement that is intentionally false, deceptive, or misleading;
- 9.1.2. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, Vendor Contractors, or Vendor Personnel;
- 9.1.3. Vendor, Vendor Contractors, or Vendor Personnel's failure to comply with any applicable local, state, and federal laws, rules, ordinances, regulations, or orders in the performance of this Agreement, including Pub 1075, HIPAA, or PCI DSS;
- 9.1.4. Any failure by Vendor or Vendor Contractors to make all reports, payments, withholdings, or provide any insurance required by federal and state law, including with respect to Social Security, workers compensation, employee income, the Affordable Care Act, and other taxes, fees, or costs required by Vendor or Vendor Contractors to conduct business in the State of Iowa;
- 9.1.5. Any claim involving any personal injury or damage to tangible property, including Customer Property, caused, in whole or in part, by Vendor, Vendor Contractors, or Vendor Personnel related to the work performed or any Services provided under this Agreement, including any Security Breach (to the extent caused by Vendor's, Vendor Contractor's, or Vendor Personnel's breach of this Agreement, negligence, or misconduct;
- 9.1.6. Vendor's, Vendor Contractor's, or Vendor Personnel's breach of any license terms, conditions, or restrictions applicable to, or violation or misappropriation of any intellectual property rights or interests in, any Customer Property that has

been licensed to the Agency or otherwise made available or accessible to the Agency or Vendor by a Third Party;

- 9.1.7. Any claim for wages, benefits, compensation, insurance, discrimination, or other similar claims asserted against the Agency by any Vendor Personnel, or any claim, penalties, or fines made, levied, assessed, or imposed by another Governmental Entity against the Agency in any way related to or involving the misclassification of employees as independent contractors or any allegations or findings of the existence of a joint-employment relationship involving any Vendor Personnel; or
- 9.1.8. 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(s), the Application Services, the System(s), or any use, access to, or the exercise of any rights with respect to any of the foregoing ("Indemnified Items") infringes, violates, or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party (collectively "Claim(s)").

For the avoidance of doubt, Vendor shall have no right or obligation to defend any State Indemnitees or be deemed to have been granted settlement authority as it relates to any claims made against any Indemnitees; provided that the State of Iowa may, solely to the extent permitted by applicable law, be required to: (i) notify Vendor in writing of any claims for which it or any State Indemnitees may subsequently seek reimbursement within a reasonable time; and (ii) afford Vendor the right to participate in an advisory capacity in the defense and settlement of any claims for which it or any State Indemnitees may subsequently seek reimbursement.

- 9.2. State of Iowa. Notwithstanding anything in the NASPO Contract or any Related Agreements to the contrary, the Participating Governmental Entity and State of Iowa shall under no circumstances have any obligation to defend, indemnify, or hold harmless Vendor or its subcontractors, agents, or other third parties acting on its behalf or otherwise related to it for any reason ("**Vendor Indemnitees**"). Solely to the extent permitted by applicable law, any obligation of the Participating Governmental Entity or State of Iowa to defend, indemnify, or hold harmless Vendor Indemnitees in the NASPO Contract or any Related Agreements shall be deleted and/or replaced and superseded with a contractual obligation between the Participating Governmental Entity and Vendor as it pertains to the content/subject matter related thereto.

10. Default and Termination.

- 10.1. Termination for Cause by the Governmental Entity. The Governmental Entity may terminate this Agreement or a Purchasing Instrument(s) upon written notice of Vendor's breach of any material term, condition, or provision of this Agreement or the applicable Purchasing Instrument, if such breach is not cured within the time period specified in the Governmental Entity's notice of breach or any subsequent notice or correspondence delivered by the Governmental Entity 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 any damages, including any liquidated damages. In addition, the Governmental Entity may terminate this Agreement or Purchasing Instrument 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, directly or indirectly, 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's or Vendor Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 10.1.3. Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;
- 10.1.4. Vendor terminates or suspends its business;
- 10.1.5. Vendor's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;
- 10.1.6. Vendor or Vendor Personnel has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations, standards, or orders when performing within the scope of this Agreement; or
- 10.1.7. The Governmental Entity determines or believes Vendor has engaged in conduct that has or may expose the Governmental Entity to material liability;
- 10.1.8. Vendor or any Deliverable(s) infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress, or any other intellectual property right or proprietary right, or 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 is not 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;
 - 10.1.9.2. 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;
 - 10.1.9.3. Consenting to any 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;
 - 10.1.9.4. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
 - 10.1.9.5. Making an assignment for the benefit of creditors;
 - 10.1.9.6. 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

10.1.9.7. Taking any action to authorize any of the foregoing.

The right to terminate this Agreement or applicable Purchasing Instrument pursuant to this Section 10.1 (Termination for Cause by the Governmental Entity) shall be in addition to and not exclusive of other remedies available to the Governmental Entity and, notwithstanding any termination, the Governmental Entity shall be entitled to exercise any other rights and pursue any remedies available under this Agreement, in law, at equity, or otherwise. Vendor shall notify the Governmental Entity in writing if any of the foregoing events occur that would authorize the Governmental Entity to immediately terminate this Agreement or a Purchasing Instrument.

- 10.2. Termination for Cause by Vendor. Vendor may only terminate an applicable Purchasing Instrument upon written notice of the breach by the Governmental Entity of any material term, condition, or provision of this Agreement related thereto, if such breach is not cured within sixty (60) days of the Governmental Entity's receipt of Vendor's written notice of breach.
- 10.3. Termination for Convenience. Following thirty (30) days written notice, the Governmental Entity may terminate this Agreement or a Purchasing Instrument, 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 may be for any reason or no reason at all.
- 10.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, the Governmental Entity shall, upon written notice, have the right to terminate this Agreement or a Purchasing Instrument, in whole or in part, without penalty or liability and without any advance notice as a result of any of the following:
 - 10.4.1. The legislature, governor, or other applicable governing body fail, in the sole opinion of the Governmental Entity, to appropriate funds sufficient to allow the Governmental Entity to either meet its obligations under this Agreement or the applicable Purchasing Instrument or to operate as required and to fulfill its obligations under this Agreement or the applicable Purchasing Instrument;
 - 10.4.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Governmental Entity to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Governmental Entity in its sole discretion;
 - 10.4.3. If the Governmental Entity'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;
 - 10.4.4. If the Governmental Entity's duties, programs, or responsibilities are modified or materially altered; or
 - 10.4.5. 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 Governmental Entity's ability to fulfill any of its obligations under this Agreement or the applicable Purchasing Instrument.
- 10.5. Limitation of Payment Obligations. In the event of a termination of this Agreement or a Purchasing Instrument for any reason (except for termination by the Governmental Entity pursuant to Section 10.1 (Termination for Cause by the Governmental Entity)), the Governmental Entity shall pay only those amounts, if any, due and owing to Vendor for Services, Deliverables for which Acceptance has been provided by the Governmental

Entity up to and including the date of termination of this Agreement or the applicable Purchasing Instrument and for which the Governmental Entity is otherwise obligated to pay pursuant to this Agreement; provided however, that the Governmental Entity'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 10.5 (Limitation of Payment Obligations) in no way limits the rights or remedies available to the Governmental Entity and shall not be construed to require the Governmental Entity to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts otherwise withheld by the Governmental Entity in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, the Governmental Entity shall not be liable, under any circumstances, for any of the following:

- 10.5.1. The payment of unemployment compensation to Vendor Personnel;
 - 10.5.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
 - 10.5.3. Any costs incurred by Vendor, Vendor Contractors, or Vendor Personnel in the performance of the Agreement, including startup costs, overhead, or other costs associated with the performance of the Agreement;
 - 10.5.4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement; or
 - 10.5.5. Any taxes Vendor may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes, or property taxes.
- 10.6. Vendor's Termination or Expiration Duties. As it relates to this Agreement or any Purchasing Instrument executed hereunder, upon receipt of notice of termination, upon expiration, or upon request of the Governmental Entity, Vendor shall:
- 10.6.1. Except as otherwise directed by the Governmental Entity pursuant to Section 10.6.6, cease work under this Agreement or the applicable Purchasing Instrument 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, expiration, or request, describing the status of all work performed under the Agreement and such other matters as the Governmental Entity may require.
 - 10.6.2. As directed by the Governmental Entity, immediately cease using and return to the Governmental Entity any Customer Property provided by the Governmental Entity, directly or indirectly, to Vendor or Customer-Owned Deliverables prepared or developed by Vendor for the Governmental Entity hereunder.
 - 10.6.3. Comply with any directions related to Vendor's destruction or return of Customer Data in accordance with Section 11.1.2 (Destruction or Return of Customer Data).
 - 10.6.4. Immediately return or refund to the Governmental Entity any payments made by the Governmental Entity for Deliverables that were not rendered or provided by Vendor, including as it relates to any pre-paid fees.
 - 10.6.5. Immediately deliver to the Governmental Entity any and all Deliverables, including Customer-Owned Deliverables, Software, Source Code, or

Documentation, for which the Governmental Entity has a property interest that is in the possession of or under the control of Vendor, Vendor Contractors, or Vendor Personnel in whatever stage of development or form at the time of such termination, expiration, or request.

- 10.6.6. Continue to perform and provide such Services, Deliverables under this Agreement as the Governmental Entity may request for a transition period of up to 365 days from the effective date of such termination or expiration. As part of such request, the Governmental Entity will inform Vendor of the number of days during which Vendor will perform or provide transition and other related Services, Deliverables, ("**Transition Period**"). During the Transition Period, Vendor will take all actions as may be necessary or requested by the Governmental Entity to accomplish a complete and timely transition of the Services, Deliverables from Vendor to the Governmental Entity or to any Authorized Contractor hired or utilized by the Governmental Entity to provide any replacement or similar Services, Deliverables ("**New Contractor**"). Vendor will use its best efforts to cooperate with the Governmental Entity and any New Contractor, and to fully comply with all requests of the Governmental Entity or the New Contractor to effect a smooth and timely transition and to ensure there is no interruption of any Services, Deliverables,. Vendor agrees that it will perform all transition services in good faith and in a professional and businesslike manner and shall comply with all reasonable requests of the Governmental Entity or any New Contractor to assist in the effort to accomplish a successful, seamless, and unhindered transition and transfer of Vendor's responsibilities under this Agreement or applicable Purchasing Instrument(s). During the Transition Period, and solely to the extent there are legally available funds to do so, the Governmental Entity agrees to pay Vendor any fees to which Vendor would be entitled under this Agreement for Services, Deliverables performed or provided during such period; provided this Agreement was not terminated pursuant to Section 10.1 (Termination for Cause by the Governmental Entity) and Vendor continues to be in full compliance with all terms and conditions of this Agreement during the Transition Period. In the event the Governmental Entity's request for transition assistance does not require Vendor to continue providing all of the Services, Deliverables under this Agreement or applicable Purchasing Instrument, the Parties will negotiate in good faith an equitable downward adjustment in the fees which are otherwise payable to Vendor.

Vendor's duties, obligations, and liabilities as set forth in this Section 10.6 shall survive termination of this Agreement.

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

- 10.7.1. The Parties have expressly agreed in writing survive any such expiration or termination, including as set forth in the following Sections:
- 10.7.1.1. 4 (Compensation and Additional Rights and Remedies);
 - 10.7.1.2. 7 (Ownership and Intellectual Property);
 - 10.7.1.3. 8 (Representations, Warranties, and Covenants);
 - 10.7.1.4. 9 (Indemnification);

- 10.7.1.5. 10 (Default and Termination);
 - 10.7.1.6. 11 (Confidentiality);
 - 10.7.1.7. 12 (Security/Privacy, Business Continuity, and Disaster Recovery); and
 - 10.7.1.8. 14 (General Provisions).
- 10.7.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

11. Confidentiality.

11.1. Vendor's Treatment of Confidential Information.

- 11.1.1. *Limited Access.* Customer Data shall at all times remain the property of the Governmental Entity, and the Governmental Entity shall retain exclusive rights thereto and ownership thereof. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Data solely to the extent necessary to carry out their duties under the Agreement. Vendor, Vendor Contractors, or Vendor Personnel shall presume all Customer Data is considered confidential, hold all Customer Data in the strictest confidence, and use and permit use of Customer Data solely for the purposes of providing Services, Deliverables under this Agreement, subject to any restrictions set forth herein or in any state and federal laws, rules, regulations, standards, and orders applicable either during the Term or thereafter. Vendor, Vendor Contractors, and Vendor Personnel shall not gather, store, log, archive, use, or otherwise retain Customer Data in any manner other than as expressly authorized by this Agreement and will not disclose, distribute, sell, commercially or politically exploit, share, rent, assign, lease, or otherwise transfer or disseminate Customer Data to any Third Party, except as expressly permitted hereunder or as Vendor may be expressly directed in advance by the Governmental Entity in writing. Vendor, Vendor Contractors, and Vendor Personnel shall not remove from any Governmental Entity facilities or retain a copy of any Customer Data unless such removal or retention is necessary to provide or perform Services, Deliverables to fulfill their obligations under this Agreement or is otherwise approved by the Governmental Entity in writing. Vendor will immediately report the unauthorized disclosure of Customer Data to the Governmental Entity.
- 11.1.2. *Destruction or Return of Customer Data.* Upon completion of duties under this Contract or upon the specific direction of the Department, the contractor shall certify that the tax information processed and any output generated during the performance of duties under this Contract has been completely purged from all information storage components, including, but not limited to data center facility, laptops, computers, and other storage devices. If immediate purging of all information storage components is not possible, the contractor shall certify that any tax information remaining in any storage component shall be safeguarded to prevent unauthorized disclosures until it has been purged. Once all tax information processed and output generated has been completely purged, the contractor shall submit a signed certification to the Department to that effect.
 - 11.1.2.1. To the extent Vendor is required to destroy Customer Data pursuant to this Section 11.1.2 (Destruction or Return of Customer Data) or any other part of this Agreement, Customer Data shall be permanently deleted and shall

not be recoverable, in accordance with National Institute of Standards and Technology ("NIST")-approved methods.

- 11.1.3. *Compelled Disclosures.* In the event that a subpoena or other legal process is served upon the contractor for records containing tax information, the contractor shall promptly notify the Department and cooperate with the Department and the IRS in any lawful effort to protect the tax information.

11.2. Treatment of Vendor's Confidential Information.

- 11.2.1. *Safeguarding Obligation.* Except as provided or contemplated herein, and subject to applicable state, federal, or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), the Governmental Entity shall not intentionally disclose Vendor's Confidential Information to a Third Party (excluding the Governmental Entity's Authorized Contractors) without the prior written consent of Vendor.
- 11.2.2. *Destruction or Return of Vendor's Confidential Information.* Upon termination or expiration of this Agreement or an applicable Purchasing Instrument, the Governmental Entity shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items subject to any continuing licenses inuring to the benefit of the Governmental Entity hereunder or that are required for use of any Customer-Owned Deliverables or other Deliverables to which the Governmental Entity has a continued right to use).
- 11.2.3. *Compelled Disclosures.* Notwithstanding and in addition to the foregoing, the Governmental Entity may disclose Vendor's Confidential Information:
 - 11.2.3.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative, or regulatory processes;
 - 11.2.3.2. Pursuant to any applicable laws, rules, or regulations;
 - 11.2.3.3. If the Governmental Entity reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
 - 11.2.3.4. If the Governmental Entity, in the Governmental Entity's sole discretion, determines Vendor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any of Vendor's Confidential Information as permitted above, the Governmental Entity shall provide reasonable notice to Vendor of the circumstances giving rise to such disclosure. Vendor agrees to indemnify and hold harmless the Governmental Entity and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs, and expenses of every kind and nature whatsoever (including 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 Governmental Entity) arising out

of, resulting from, or in any way related to any judgments or damages awarded against any of the foregoing entities or individuals in favor of a Third Party requesting any of Vendor's Confidential Information against the Governmental Entity or any such entities or individuals.

- 11.3. Open Records and Electronic Discovery Requests and Records Retention. Vendor will, upon the Governmental Entity's request and within any time period specified by the Governmental Entity, take all actions requested by the Governmental Entity to assist it in complying timely with any request for Customer Data or other data or information that may be made by any Third Party in accordance with applicable public or open records laws (including Iowa Code Chapter 22) or in connection with any subpoena, court order, discovery request, regulatory or criminal investigation or proceeding, or any other matter that may require the Governmental Entity to produce or provide Customer Data or other data or information to a Third Party. Vendor will produce and provide all Customer Data or other data or information within the time period set forth in the Governmental Entity's request. Vendor will take all steps necessary to ensure Customer Data is stored and maintained in its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon the Governmental Entity's request, take all actions requested by the Governmental Entity to assist it in complying with any federal, state, or local record retention requirements, policies, procedures, or other similar requirements.
- 11.4. Non-Exclusive Equitable Remedy. Each Party acknowledges and agrees that due to the unique nature of Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or Third Parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section 11 (Confidentiality) will constitute a material breach of this Agreement and be grounds for immediate termination of any applicable Purchasing Instrument, or in the Governmental Entity's case the Agreement, in the exclusive discretion of the non-breaching Party.
- 11.5. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 11 (Confidentiality) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.

12. Security/Privacy, Business Continuity, and Disaster Recovery.

- 12.1. **Data Protection.** Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data, Customer Property, and any related Deliverables. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:
 - 12.1.1. Implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, theft, or modification of or to Customer Data, Customer Property, or any related Deliverables. Such security measures shall be in accordance with recognized

industry standards and controls (including NIST 800-53 Revision 4 and ISO 27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard their own Confidential Information of like importance. In addition, such security measures, to the extent applicable, shall comply with, and shall enable the Governmental Entity to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, policies, or procedures ordinances, codes, regulations, and orders related to such security measures or other security, privacy, or safeguarding requirements, including applicable I.T. Governance Document(s).

- 12.1.2. All Customer Data shall be encrypted at rest and in transit with controlled access and any related Deliverables shall use TLS 1.2 or higher. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor, Vendor Contractors, and Vendor Personnel are responsible for encryption of Customer Data in their possession. Additionally, Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless the Governmental Entity approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.
- 12.1.3. Storage, Processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America. Vendor shall not allow Vendor Personnel to store, Process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.
- 12.1.4. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support. Vendor shall utilize a Follow-the-Sun model when providing technical user support on a 24/7 basis.

12.2. Personnel Safeguards.

12.2.1. *Background Checks.*

- 12.2.1.1. Minimum Requirements. Vendor shall comply with their internal background check policies. In the event Vendor's background check policy is inadequate based on the nature of Customer Data at issue in the determination of the Purchasing Entity, Vendor agrees to comply with the Purchasing Entity's background check policy. Vendor shall provide DOM and/or the Purchasing Entity with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel. In the event of an adverse finding, Vendor Personnel may be disqualified from performing services under the Agreement in the sole discretion of DOM or the applicable Purchasing Entity.
- 12.2.1.2. Costs. Vendor is responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor, DOM, or the Purchasing Entity or their Authorized Contractors.

- 12.2.2. *Additional Screening.* The Governmental Entity reserves the right to subject Vendor Personnel to additional background checks for highly sensitive engagements or where required by applicable law or policy at any time prior to or during any engagement. Such background checks may include a work history, financial review, request for criminal history data, or local or state criminal history check, national criminal history check through the Federal Bureau of Investigation ("FBI"), or other background check requirement imposed or permitted by law, rule, regulation, order, or policy. Vendor Personnel may be required to authorize the release of the results of criminal history checks, including those through the FBI, to one or more other Governmental Entities. Such background checks may be conducted by the Governmental Entity or its Authorized Contractors. The Governmental Entity may also require Vendor to conduct a work history or financial review of Vendor Personnel. Vendor shall provide the Governmental Entity with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.
- 12.2.3. Vendor shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor or the Governmental Entity or its Authorized Contractors.
- 12.2.4. *Right to Remove Individuals.* Should the Governmental Entity be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel, the Governmental Entity may request the replacement of such Vendor Personnel ("**Replacement Request**"). The Replacement Request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. If the Governmental Entity, in its sole discretion, determines Vendor Personnel pose a potential security risk and notifies Vendor of such security risk in its Replacement Request, Vendor shall immediately remove such individual from work under this Agreement; any replacement furnished by Vendor in connection with such a request may not perform or provide Services or Deliverables to the Governmental Entity unless and until the Governmental Entity gives its consent to Vendor's use of such replacement.
- 12.2.5. *Security Awareness Training.* Vendor shall promote and maintain an awareness of the importance of securing, safeguarding, and otherwise appropriately handling Customer Property, including Customer Data, among Vendor Personnel, including but not limited to, Governmental Entity's annual security training.
- 12.2.6. *Separation of Job Duties.* Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Contractors and Vendor Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Property and Customer Data to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Services or Deliverables hereunder.
- 12.2.7. *Non-disclosure/Confidentiality Agreements.* Vendor Personnel are required to sign the Governmental Entity's standard confidentiality or non-disclosure agreement(s), or other confidentiality or non-disclosure agreement(s), including as may be required by applicable law, rule, regulation, or policy.

12.3. Security Breaches.

- 12.3.1. *Reporting.* Vendor or Vendor Contractors will report to the Governmental Entity within two (2) hours of Vendor's or Vendor Contractor's discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to the Governmental Entity within forty-eight (48) hours of discovery or notification of the actual or suspected Security Breach. Such written confirmation shall include an explanation of the nature of and circumstances surrounding such actual or suspected Security Breach.
- 12.3.2. *Investigations in Response to Actual or Suspected Breach.* Vendor and Vendor Contractors agree, at their sole expense, to take all commercially reasonable steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the Governmental Entity in resolving and mitigating any damage from such actual or suspected Security Breach. At no additional cost to the Governmental Entity or the State of Iowa Vendor and Vendor Contractor will fully cooperate with the Governmental Entity and its Authorized Contractors in investigating such actual or suspected Security Breach, including reviewing and assisting in reviewing system, application, and access logs, conducting and assisting in conducting forensic audits of relevant systems, imaging and assisting in imaging relevant media, and making personnel available for interview. On notice of any actual or suspected Security Breach, Vendor and Vendor Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. Vendor and Vendor Contractor will deliver to the Governmental Entity a root cause assessment and future incident mitigation plan and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. Vendor agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless the Governmental Entity specifically requests Vendor do so in writing.
- 12.3.3. *Additional Remedies in the Event of Actual Breach.* Upon the Governmental Entity's determination that a Security Breach involving or relating to Customer Data or related Deliverables has occurred, Vendor and Vendor Contractors shall fully cooperate with the Governmental Entity in fully rectifying and responding to such Security Breach. Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, legal fees, (including the reasonable value of time of the Iowa Attorney General's Office or the costs, expenses and attorney fees of other counsel retained by the State of Iowa or the Governmental Entity) arising out of, any Security Breach of Customer Data caused directly or indirectly, in whole or in part, by any act, error or omission in breach of this Agreement, negligence, or misconduct of Vendor, Vendor Contractors, or Vendor Personnel, which may include if applicable the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; to the extent required by applicable law, obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all

other costs associated with corrective or other commercially reasonable actions that are taken to mitigate or address the Security Breach, provided however the Agency will work with Vendor to facilitate Vendor's use of and reimbursement from Vendor's cyber liability insurance. The Governmental Entity shall determine, in its sole discretion, the content and means of delivery of any such notifications or reports. Vendor will reimburse or pay to the Governmental Entity all such expenses, fees, damages, and all other amounts within fifteen (15) business days of the date of any written demand or request delivered to Vendor.

- 12.3.4. For purposes of this Section, "**Security Breach**" means the unauthorized acquisition of or access to any information or data of or belonging to the Participating Governmental Entity or the State of Iowa by an unauthorized person that compromises the security, confidentiality, or integrity of such data or information including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. "**Security Breach**" shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order. A suspected security breach means an incident where there is a reasonable likelihood that personal information was inappropriately acquired, accessed, used, or disclosed.
- 12.3.5. Notwithstanding other requirements in this Agreement, if there is a breach of any "personal information" as that term is defined and governed by Iowa Code chapter 715C, that has been provided to Vendor or Vendor Contractor pursuant to this Agreement, Vendor understands and agrees that Vendor, not the Governmental Entity, shall be responsible for complying with any applicable provisions of Iowa Code chapter 715C, including but not limited to any applicable consumer notification requirements.

12.4. **Disaster Recovery and Business Continuity.**

- 12.4.1. *Creation, Maintenance, and Testing.* Vendor shall maintain a Business Continuity and Disaster Recovery Plan for related Deliverables ("**Plan**"), and implement such plan in the event of any unplanned interruption. Upon the Governmental Entity's request, Vendor shall provide the Governmental Entity with a copy of Vendor's current Plan, revision history, and any reports or summaries relating to past testing of the Plan. Vendor shall actively test, review, and update the Plan on at least an annual basis using American Institute of Certified Public Accountants standards and other industry best practices as guidance. Vendor shall promptly provide the Governmental Entity with copies of all reports and summaries resulting from any testing of the Plan and with copies of any updates to the Plan. All updates shall be subject to the requirements of this Section 12.4 (Disaster Recovery/Business Continuity). Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard the Customer Data and the data processing capability and availability of the related Deliverables. Additional disaster recovery and business continuity requirements may be set forth in individual Purchasing Instruments.
- 12.4.2. *Activation of Plan.* Vendor shall immediately notify the Governmental Entity of any disaster or other event that results in the activation of the Plan. If Vendor fails to reinstate related Deliverables impacted by any such disaster within the periods of time set forth in the Plan, the Governmental Entity may, in addition to any other remedies available hereunder, immediately terminate this Agreement or applicable

Purchasing Instrument as a non-curable default and without any penalty or liability. Without limiting Vendor's obligations under this Agreement, whenever a disaster causes Vendor to allocate limited resources between or among Vendor's customers, the Governmental Entity shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 14.26 (Force Majeure) shall not limit Vendor's obligations under this Section. Further, nothing in this shall be construed as in any way limiting Vendor's obligations elsewhere in this Agreement, including any applicable services levels and related remedies set forth in any Service-Level Agreement attached hereto as Special Terms and Conditions.

- 12.4.3. *Backup and Recovery.* Except as otherwise set forth in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and Conditions, Vendor is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within two (2) hours at any point in time. Additionally, unless otherwise provided in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and Conditions, Vendor shall store a backup of Customer Data in an off-site "hardened" facility no less than daily, maintaining the security of Customer Data, consistent with the security requirements set forth in this Section. To the extent applicable in calculating the fees to be charged to the Governmental Entity under this Agreement, any backups of Customer Data shall not be considered in calculating storage used by the Governmental Entity.
- 12.4.4. *Loss of Data.* In the event of any Security Breach or any other event that compromises the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Vendor or Vendor Contractors related to the protection of the security, confidentiality, or integrity of Customer Data, Vendor shall, in addition to any other remedies available pursuant to this Agreement, or otherwise available at law or in equity, to the extent applicable: (a) notify the Governmental Entity as soon as practicable but no later than two (2) hours of becoming aware of such occurrence; (b) send the Governmental Entity written confirmation within forty-eight (48) hours of discovery or notification of the occurrence; (c) cooperate with Governmental Entity in investigating the occurrence, including, but not limited to providing to the Governmental Entity and assisting the Governmental Entity in reviewing system, application, and access logs, conducting forensic audits of relevant systems, imaging relevant media, and making personnel available for interview; (d) indemnify and hold harmless the Governmental Entity and its employees, officers, board members, agents, representatives, and officials from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and expenses (including the reasonable value of time of the Iowa 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 such occurrence; (e) be responsible for recreating lost Customer Data in the manner and on the schedule specified by the Governmental Entity without charge; and, (g) provide to the Governmental Entity a detailed plan within ten (10) calendar days of the occurrence describing the measures Vendor will undertake to prevent a future occurrence.

- 12.4.5. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 12 (Security/Privacy, Business Continuity, and Disaster Recovery) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.
13. **Use of Artificial Intelligence.** Vendor shall obtain prior written approval from the Governmental Entity before utilizing generative artificial intelligence technologies based on large language models and similar technologies that generate text, images, and video in response to prompts ("AI") in the provision of services under this Agreement and Purchasing Instruments entered into pursuant to this Agreement. The Vendor shall clearly identify in writing, which may include proposals, brochures and websites referenced therein, the specific AI technologies to be employed, their intended functions, and their potential impact on service delivery. A signed Agreement or Purchasing Instrument incorporating Vendor's identification of the AI technologies, their functions and impact shall constitute written approval from the Governmental Entity.
14. **General Provisions**
- 14.1. Ancillary Agreements and Non-Disclosure Agreements. Vendor or Vendor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to the Governmental Entity in connection with this Agreement, including executing a Confidential Information Requirements for Vendors addendum as required by Pub 1075. Such Ancillary Agreements shall be attached as Special Terms and Conditions hereto and incorporated by reference as if fully set forth herein.
- 14.2. Immigration Status. Vendor and Vendor Contractors are responsible for ensuring Vendor Personnel possess and maintain valid Visas for any Vendor Personnel for whom a Visa is required. As outlined in section 12.2.1, the Governmental Entity requires Vendor or Vendor Contractors to conduct E-Verify employment-eligibility verifications of Vendor Personnel performing or providing Services or Deliverables hereunder, including any Vendor Personnel who may have access to Customer Property or Customer Data. Vendor shall be responsible for all costs associated with the E-Verify process and shall provide the Governmental Entity with the results of this process in a mutually agreeable form and manner at the time or in intervals as mutually agreed to by the Parties.
- 14.3. No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor, Vendor Contractors, and Vendor Personnel shall not make any media release or other public announcement relating to or referring to this Agreement, a Purchasing Instrument, or the Services or Deliverables provided hereunder without the Governmental Entity's prior written consent. Vendor, Vendor Contractors, and Vendor Personnel shall acquire no right to use, and shall not use, without the Governmental Entity's written consent, the terms or existence of this Agreement, Purchasing Instrument, or the fact of providing Services or Deliverables to the Governmental Entity hereunder or the names, trade names, trademarks, service marks, artwork, designs, or copyrighted

materials of the State of Iowa, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; (b) to express or to imply any endorsement of Vendor or Vendor's Services or Deliverables by the State of Iowa; or (c) in any manner other than expressly in accordance with this Agreement.

- 14.4. Independent Contractor. Vendor is an independent contractor performing services for the Governmental Entity.
- 14.4.1. Vendor, Vendor Contractors, and Vendor Personnel shall not hold themselves out as an employee or agent of the State of Iowa or its related entities.
 - 14.4.2. Except as otherwise expressly provided herein or in a Purchasing Instrument, Vendor or Vendor Contractors shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Vendor Personnel to perform and provide the Services, Deliverables hereunder.
 - 14.4.3. Vendor Personnel are not eligible for or otherwise entitled to, and Vendor shall ensure Vendor Personnel never claim they are eligible for or otherwise entitled to, any Governmental Entity employee benefits, including retirement benefits, insurance coverage, or the like.
 - 14.4.4. Vendor Personnel shall not be considered employees of the State of Iowa for any purpose, including for federal or Governmental Entity tax purposes. The State of Iowa will not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned in connection with its performance of this Agreement.
 - 14.4.5. The Governmental Entity shall have no right or authority to direct or control Vendor Personnel with respect to the performance or provisioning of Services or Deliverables under this Agreement, or with respect to any other matter, except as otherwise provided by this Agreement or a Purchasing Instrument. The Governmental Entity is interested only in the results to be achieved by Vendor under this Agreement and related Purchasing Instruments. The manner and method of performing and providing Services and Deliverables under this Agreement and related Purchasing Instruments shall be under the exclusive control of Vendor, in accordance with the terms and conditions of this Agreement and the applicable Purchasing Instrument(s).
 - 14.4.6. During any engagement under this Agreement, Vendor Personnel may perform work on behalf of, and provide deliverables to, Third Parties, and may market and advertise their services to Third Parties, so long as such activities do not: (a) violate any terms or conditions of this Agreement; (b) adversely affect the performance or provisioning of Services or Deliverables hereunder or satisfaction of any other duties, responsibilities, or obligations set forth herein; (c) create an actual or potential conflict of interest; (d) violate any intellectual property rights or interests of the Governmental Entity; (e) expose the Governmental Entity to an increased risk of experiencing a Security Breach or other cyber event.
 - 14.4.7. Vendor and Vendor Contractors shall be free to hire employees as is necessary for their business purposes; provided, that such employees providing or provisioning Services or Deliverables hereunder shall satisfy the terms and conditions of this Agreement and any Purchasing Instrument(s) executed hereunder. The Parties

acknowledge and agree that the Governmental Entity will not have the authority to hire, fire, supervise, control, or manage any Vendor Personnel.

- 14.4.8. Vendor Personnel shall not receive performance reviews, vocational training, or business cards from the Governmental Entity; shall clearly state in any and all communications related to the performance or provisioning of Services or Deliverables hereunder that they are employees of Vendor or Vendor Contractor, as opposed to employees of the Governmental Entity; and shall not be subject to the Governmental Entity's standard disciplinary practices and procedures.
- 14.5. Amendments. This Agreement may be amended, modified, or replaced from time to time by mutual consent of the Governmental Entity and Vendor. All amendments to this Agreement must be executed by both Parties in writing.
- 14.6. No Third Party Beneficiaries. Except as otherwise expressly stated herein, there are no Third Party beneficiaries to this Agreement. This Agreement is intended only to benefit the Governmental Entity and Vendor and their respective successors and permitted assigns and the individuals whose Personal Data is stored, transmitted, or otherwise Processed by the related Deliverables.
- 14.7. Choice of Law/Forum. Notwithstanding anything in the NASPO Contract or any Related Agreement to the contrary, this purchase shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this purchase, including after expiration or termination of the same, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of the NASPO Contract or any Related Agreements 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.
- 14.8. 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 Governmental Entity may assign, transfer, or convey this Agreement, in whole or in part, to any Governmental Entity that succeeds its duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Governmental Entity. 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 Governmental Entity 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 Governmental Entity. Vendor further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Vendor under this Agreement.

- 14.9. Use of Third Parties. No subcontract or other delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement, the NASPO Contract, or any Related Agreements. Vendor shall remain solely responsible its performance under this Agreement, the NASPO Contract, or any Related Agreements and for compliance with the terms, conditions, and requirements set forth in the same. Vendor shall be fully responsible and liable for all acts or omissions of any subcontractors, affiliates, subsidiaries, or any other third party, and any employees, agents, independent contractors, or any other staff or personnel of any of the foregoing ("**Vendor Agents**") acting on behalf of or at the direction of Vendor. Any action of a Vendor Agent, which, if done by Vendor, would constitute a breach of this Agreement, the NASPO Contract, or any Related Agreements, shall be deemed a breach by Vendor and have the same legal effect. Vendor is solely liable for any and all payments that may be due to Vendor Agents pursuant to any subcontract or otherwise. Vendor shall indemnify and hold harmless the State, DOM, and the Participating Governmental Entity and their officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Vendor's breach of any subcontract or contract into which it enters, including Vendor's failure to pay any and all amounts due to any Vendor Agents. All subcontracts shall contain provisions which allow the Participating Governmental Entity or its designee to access the subcontractor's books, documents, and records and for inspections of work.
- 14.10. 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. Thus, the Governmental Entity shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "browser-wrap" agreement, or "sneakwrap" agreement, or any other similar agreement that may accompany, relate to, or be embedded in any Deliverable(s). Vendor acknowledges that it has thoroughly read this Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents that are executed or may be executed hereunder 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 the same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Governmental Entity on the basis of draftsmanship or preparation thereof.
- 14.11. Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Governmental Entity and Vendor for the Services or Deliverables provided in connection with this Agreement.
- 14.12. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Governmental Entity and Vendor, failure by the Governmental Entity or Vendor 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.
- 14.13. Notices. Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice as identified on the CD&E, or on the applicable Purchasing Instrument, as applicable, at the address of the Party to receive notice. 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 affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS.

- 14.14. Cumulative Rights. The various rights, powers, options, elections, and remedies of the Governmental Entity provided for 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 by law, and shall in no way affect or impair the right of the Governmental Entity to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by the Governmental Entity of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 14.15. 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.
- 14.16. 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 Vendor Personnel providing Services and Deliverables hereunder are responsive to the Governmental Entity's requirements and requests in all respects, including in accordance with any specific timelines identified in a duly executed Purchasing Instrument.
- 14.17. 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.
- 14.18. Successors in Interest. All 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.
- 14.19. Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, the NASPO Contract, or any Related Agreements, including records that document all fees and other amounts charged during the term of this Agreement, the NASPO Contract, or any Related Agreements, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of the same, or the completion of any required audit. Vendor shall permit the Participating Governmental Entity or its designee, 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 the PO, this Agreement, the NASPO Contract, or any Related Agreements. 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.
- 14.20. Headings or Captions and Terms. The section headings or captions set forth in this Agreement 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" or "but not limited to." 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.

- 14.21. Multiple Counterparts and Electronic Signatures. This Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents that are executed or may be executed hereunder, including any amendments to any of the foregoing, 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 such document(s) shall constitute an original. Signatures on such documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures, with such scanned and electronic signatures having the same legal effect as original signatures. Such documents may be accepted, executed, or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("**E-Sign Act**"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act, codified at Iowa Code chapter 554D ("**UETA**"), or any other applicable state law, rule, policy, standard, directive, or order. Any document accepted, executed, or agreed to in conformity with such laws, rules, policies, standards, directives, or orders will be binding on the signing Party as if it were physically executed. Vendor acknowledges and agrees it will not contest the validity or enforceability of any such document(s), including under any applicable statute of frauds, because they were accepted, signed, or transmitted in electronic form. Vendor further acknowledges and agrees that it will not contest the validity or enforceability of a signed scanned or facsimile copy of any such document(s) on the basis that it lacks an original handwritten signature, or on the basis that the Parties were not signatories to the same counterpart.
- 14.22. Not a Joint Venture. Nothing in this Agreement, the NASPO Contract, or any Related Agreements 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.
- 14.23. Attachments. The Parties agree that if an Addendum, Attachment, 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 as if fully set forth herein.
- 14.24. 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.
- 14.25. 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.
- 14.26. Force Majeure. 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 Vendor or Vendor Contractors; claims or court orders that restrict Vendor's or Vendor Contractor's ability to perform or deliver the Services or Deliverables, contemplated by this Agreement; strikes; labor unrest; supply chain disruptions; internet failure; power failures; hacker attacks; denial of service attacks; virus or other malicious software attacks or infections; or Security Breach. If delay results from a Vendor Contractor's conduct, negligence, or failure to perform, Vendor shall not be excused from compliance with the terms and obligations of Vendor unless the Vendor Contractor is prevented from timely performance by a "force majeure" as defined in this Agreement. If a "force majeure" delays or prevents Vendor's performance, 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 Governmental Entity. 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 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.

- 14.27. 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.
- 14.28. Right of Inspection/Contract Compliance. Vendor shall allow the Governmental Entity making purchases or its designee to inspect Vendor's books and records at reasonable times in order to monitor and evaluate performance of this Agreement. All subcontracts shall contain provisions which allow the same. In addition, Vendor agrees that the Governmental Entity or its designee 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 Vendor is complying with the terms of this Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations requested by the Governmental Entity or its designee. Vendor shall not impose any charge or fee in connection with any contract compliance audit.
- 14.29. Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Governmental Entity is exempt from the payment of Governmental Entity sales and other taxes: https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf.
- 14.30. Title to Property. Title to all property, including Customer Property, furnished by the Governmental Entity to Vendor to facilitate the performance of this Agreement and any

Customer-Owned Deliverables shall remain the sole property of the Governmental Entity or applicable Third Party owning Customer Property that has been licensed to the Governmental Entity. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Governmental Entity upon the earliest of completion, termination, or cancellation of this Agreement or the applicable Purchasing Instrument, or at the Governmental Entity's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided for in this Agreement, Vendor shall not disclose or use such property for any of the following purposes, 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. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Governmental Entity under this Agreement, or for Customer Property or Customer-Owned Deliverables purchased and paid for by the Governmental Entity under this Agreement, shall pass to and vest in the Governmental Entity.

- 14.31. Exclusivity. This Agreement is not exclusive. The Governmental Entity may obtain similar or identical Services or Deliverables from other vendors.
- 14.32. Award of Related Agreements. The Governmental Entity may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with Authorized Contractors who may be engaged by the Governmental Entity in connection with this Agreement, including complying with any license terms, conditions, or restrictions imposed by such Authorized Contractors in connection with any systems, software, or other intellectual property owned by or licensed by or through such Authorized Contractors and to which Vendor, Vendor Contractors, or Vendor Personnel must use or access or with which the related Deliverables must interface, integrate, or connect. Any reference herein to the Governmental Entity's designee or other like reference shall be deemed to include its Authorized Contractors. Vendor will ensure that any Vendor Contractors or Vendor Personnel will abide by this provision.
- 14.33. Sovereign Immunity. The Governmental Entity, on its own behalf or on behalf of any of its officers, directors, employees, officials, and agents, does not waive sovereign immunity or any other immunity available to it by entering into this Agreement and specifically retains and reserves the defense of sovereign immunity or any other immunity and all defenses available under Governmental Entity and federal laws, rules, and regulations for any claim arising out of or related to this Agreement.
- 14.34. Attorney's Fees and Expenses. In the event Vendor defaults on any of its obligations under this Agreement, Vendor shall pay to the Governmental Entity all costs and expenses (including 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 Governmental Entity) incurred by the Governmental Entity in enforcing this Agreement or any of its rights and remedies with respect thereto.
- 14.35. 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, and intellectual property, including Customer Property, furnished by the Governmental Entity 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 Governmental Entity's request, restore damaged property to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Governmental Entity. In addition, at the Governmental Entity's

request, Vendor will reimburse the Governmental Entity for any loss or damage to such property caused by Vendor, Vendor Contractors, or Vendor Personnel. 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 Governmental Entity or State of Iowa.

- 14.36. Survives Termination. The terms set forth in this agreement (General Provisions) shall survive termination or expiration of the Agreement.

Attachment A: Tyler Product Use and Licensing Terms for Application Platform

This Attachment A is by this reference incorporated into and made part of the Tyler Technologies Citizen Engagement Platforms Agreement, contract number #2023BUS0821 ("Agreement") between the State of Iowa acting by and through the State of Iowa Department of Management ("DOM"), and Tyler Technologies, Inc. ("Vendor").

1. **Vendor Product Use and Licensing Terms.** The following terms and conditions hyperlinked into this Attachment A are applicable to Application Platform and incorporated by reference, individually and collectively referred to as "**Vendor Terms**":

- <https://www.tylertech.com/client-terms/caseapp-terms>

2. **Priority.** To the extent there is any conflict between any terms and conditions included in Section 1 (Vendor Product Use and Licensing Terms) and Section 3 (DOM Wrap-around Terms), the terms set forth in Section 3 shall prevail.

3. **DOM Wrap-Around Terms.**

- 3.1. **Definitions.** Terms not defined herein shall have the meanings set forth in the Agreement:

- 3.1.1. "**Terms of Service**" or "**TOS**" means the terms and conditions set forth in this Section 3.

- 3.1.2. "**Cloud Services**" means any products licensed to a Governmental Entity and owned by Vendor per the terms of a Purchasing Instrument.

- 3.2. **Relationship between DOM and other Governmental Entities.** To the extent a Governmental Entity other than DOM enters into enters into a Purchasing Instrument with Vendor, such Governmental Entity shall be solely responsible for any duties and obligations otherwise owed the Vendor in connection therewith. In addition, notwithstanding any other provision of Vendor Terms to the contrary, DOM bears no obligation or liability for any other Governmental Entity's losses, liabilities, or obligations, including the Vendor or Vendor Contractor's failure to perform, arising out of or relating in any way to Vendor Terms. Likewise, the State of Iowa generally bears no obligation or liability for any political subdivision or other non-State entity's losses, liabilities, or obligations, including the Vendor's or Vendor Contractor's failure to perform, arising out of or relating in any way to Vendor Terms.

- 3.3. **Term.** Unless and until such license is terminated for cause, and solely to the extent such license is paid for in accordance with the terms of the Agreement, the term (e.g., perpetual, subscription) for any Cloud Services shall be as provided in the applicable Purchasing Instrument or other appropriate documentation, and shall continue beyond any expiration or termination of the Agreement.

- 3.4. **Grant of License or Use Rights.**

- 3.4.1. Notwithstanding anything in the Vendor Terms to the contrary, any Cloud Services shall include the following additional grant of rights from the Vendor and Vendor Contractors:
- 3.4.1.1. Any and all rights necessary for the Governmental Entity to access and use the Cloud Services for the Governmental Entity's governmental activities, including as described in any Purchasing Instrument;
 - 3.4.1.2. Any and all rights necessary for the Governmental Entity to access and use the Cloud Services as described in applicable Documentation;
 - 3.4.1.3. The same grant of rights conferred hereunder to the Governmental Entity's Authorized Contractors to the extent of any quantity ordered (regardless of whether on a "user," "seat," "device," or other similar basis) by the Governmental Entity.
- 3.5. **Governmental Entities Not Required to Accept or Install Enhancements.** The Vendor shall not condition any Governmental Entity's rights or remedies, or the Vendor's duties or obligations, under Vendor Terms on the Governmental Entity accepting or installing any Enhancements or additional functionality provided by the Vendor.
- 3.6. **Deficiencies.** The Vendor shall be responsible for remediating any Deficiencies within a reasonable time following notice from the Governmental Entity of the Deficiency and otherwise in accordance with any applicable service level agreements.
- 3.7. **Payment Terms.** Payment terms shall be in accordance with the Agreement and Purchasing Instrument. Any and all terms and conditions related to payment in the Vendor Terms shall be void, including those related to tax and interest. Payment shall be solely the responsibility of and between the Governmental Entity and Vendor. Payment by any Governmental Entity to Vendor for any Cloud Services under the Agreement shall constitute a full release and discharge of the Governmental Entity as it relates to any obligations or liabilities related to payment for any Cloud Services.
- 3.8. **Confidentiality.** Notwithstanding anything in Vendor Terms to the contrary, any duties or obligations as it relates to any terms and conditions requiring a Governmental Entity to maintain any of the Vendor's or Vendor Contractor's Confidential Information in confidence shall be subject to and limited by applicable State laws, rules and regulations, including, without limitation, Iowa Code Chapter 22, and fair information practices rules. The Governmental Entity shall not be in breach of Vendor Terms for any failure to comply with any provision relating to confidential information if the Governmental Entity is complying with or attempting to comply with any such laws, rules, and regulations in so doing. In addition, and notwithstanding anything in Vendor Terms to

the contrary, a Governmental Entity may disclose the Vendor's or Vendor Contractor's Confidential Information:

- 3.8.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative or regulatory processes;
- 3.8.2. Pursuant to any applicable laws, rules, or regulations;
- 3.8.3. If the Governmental Entity reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
- 3.8.4. If the Governmental Entity determines the Vendor or Vendor Contractor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations. Prior to disclosing any of the Vendor's or Vendor Contractor's Confidential Information as permitted above, the Governmental Entity shall provide reasonable notice to the Vendor of the circumstances giving rise to such disclosure.

The Governmental Entity shall remain the sole and exclusive owner of any and all Customer Data supplied or provided by it, directly or indirectly, to the Vendor in connection with Vendor Terms, including any Customer Data stored, processed, or transmitted in, by, or through the Cloud Services. Each Party acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or third parties to unfairly compete with the other party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of any provisions relating to Confidential Information will constitute a material breach of the agreement between the Parties and be grounds for immediate termination in the exclusive discretion of the non-breaching Party. Any/all provisions relating to Confidential Information or Customer Data conferring rights, benefits, privileges, indemnifications, or other like guarantees on or to any Governmental Entity pursuant to Vendor Terms shall survive termination/expiration of the Vendor Terms or the Agreement.

- 3.8.5 **Limitation of Liability.** Limitation of Liability is governed by Section 6 of the Iowa Department of Management Tyler Technologies Citizen Engagement Platform Terms and Conditions.

3.8.5. Indemnification. Indemnification is governed by Section 9 of the Iowa Department of Management Tyler Technologies Citizen Engagement Platform Terms and Conditions.

3.9. Choice of Law/Forum. Notwithstanding anything in the Vendor Terms, this Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with the Cloud Services, including after expiration or termination of the Agreement or the Vendor Terms, 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. The Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of Vendor Terms shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. Any provision in the Vendor Terms calling for arbitration or any other form of alternative dispute resolution shall be void.

3.10. Privacy/Security Terms and Conditions.

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

3.10.2. Vendor's access to and use of Customer Data. The Vendor shall not use any Customer Data for any purpose other than fulfilling the Vendor's express duties and obligations under the Agreement and applicable Purchasing Instrument, in accordance with the terms and conditions set forth herein, and any applicable laws, rules, and regulations.

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

3.10.3.1. The Cloud Services will perform in accordance with applicable control standards and frameworks as detailed in the Vendor EULA.

3.10.3.2. All Customer Data shall be encrypted at rest and in transit with controlled access. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, the Vendor is responsible for encryption of Customer Data in their possession. Additionally, the Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security

Requirements for Cryptographic Modules for all Customer Data, unless the Governmental Entity approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.

- 3.10.3.3. Storage of Customer Data at rest and all backups shall occur solely in the continental United States of America.
- 3.10.3.4. The Vendor will not access, store, process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.
- 3.10.3.5. During the term, the Governmental Entity or its Authorized Contractor(s) may request, and Vendor shall provide, the results of Vendor's security audits/scans of the Vendor's environment,.
- 3.10.4. Security Logs. As it relates to the Cloud Services, the Vendor and Vendor Contractors shall provide available security logs and reports to the Governmental Entity or its Authorized Contractors in a mutually agreeable format upon request. In the event of any real or suspected Security Breach, Vendor will provide any relevant security logs to assist the State in the investigation of such Security Breach.
- 3.10.5. Backups. As it relates to any Cloud Services, the Vendor is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within two (2) hours at any point in time. Additionally, the Vendor shall store a backup of Customer Data in an off-site "hardened" facility no less than daily, maintaining the security of Customer Data, and consistent with the security requirements set forth in this Section.
- 3.10.6. Import and Export of Customer Data. To the extent Customer Data is stored, retained, or otherwise maintained in electronic format in connection with any Cloud Services, the Governmental Entity or its Authorized Contractors shall have the ability to import or export data or information, including Customer Data, in whole or in part to or from the Cloud Services, at no charge, and in such formats as may be acceptable to the Governmental Entity, without interference from the Vendor, Vendor Contractors, or Vendor Personnel. In the event a Governmental Entity is unable to successfully import or export Customer Data in whole or in part, the Vendor or Vendor Contractor shall assist the Governmental Entity in doing so at no charge. As it relates to the export of such data and information, the Vendor or Vendor Contractor shall provide to or ensure the Governmental Entity has obtained an export of any requested Customer Data within a timeframe mutually agreed between the Parties in the format specified by the Governmental Entity.
- 3.10.7. Retention/Return/Destruction of Customer Data. Upon termination or expiration of the Cloud Services, the Vendor may be required to promptly return or destroy, at the Governmental Entity's sole option, all Customer Data, and provide a notarized written statement to the Governmental Entity certifying that all Customer Data

under or in the Vendor's control or possession has been delivered to the Governmental Entity or destroyed, as requested by the Governmental Entity. To the extent the Vendor is required to destroy Customer Data, such Customer Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. The Vendor agrees that in connection with any termination or expiration of the Cloud Services, the Vendor shall not take any action to intentionally erase any Customer Data without first providing prior notice to and consent from the applicable Governmental Entity in writing.

3.10.8. Personnel Safeguards.

3.10.8.1. *Background Checks.*

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

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

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

3.10.8.2. *Security Awareness Training.* The Vendor shall promote and maintain an awareness of the importance of securing Customer Data among Vendor Personnel.

- 3.10.8.3. *Separation of Job Duties.* The Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Data to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide the Cloud Services.
- 3.11. Security Breaches. Security Breaches are governed by Section 12.3 of the Iowa Department of Management Tyler Technologies Citizen Engagement Platform Terms and Conditions.
- 3.12. **Compliance with Law.** The Vendor represents, warrants, covenants, and promises that the Vendor, Vendor Contractors, and Vendor Personnel have complied with, and shall continue to comply with, and, to the extent applicable the Cloud Services will comply with, all applicable federal, state, foreign, and local laws, rules, regulations, codes, standards, ordinances, and orders both generally and in connection with the performance of this Agreement, including the following:
- 3.12.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State's written request, the Vendor shall submit to the State a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
- 3.12.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
- 3.12.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 3.12.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 3.12.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.0, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
- 3.12.6. Notwithstanding anything in the Vendor Terms to the contrary, the Vendor's failure to fulfill any requirement set forth in this Section shall be regarded as a material breach and the Governmental Entity may cancel, terminate, or suspend, in whole or in part Vendor Terms and conditions and any related Purchasing Instrument without penalty or liability. The Vendor shall take such steps as necessary to ensure any Vendor Contractors are bound by the terms and conditions

contained in this Section. In addition, as it relates to the breach of representations, warranties, and obligations of Section 11.1, DOM or its designee may declare the Vendor ineligible for future State contracts in accordance with authorized procedures or the Vendor may be subject to other sanctions as provided by law or rule.

- 3.13. **Conflicts of Interest.** The Vendor represents, warrants, and covenants that no relationship exists or will exist during the term of Vendor Terms that is or may constitute a conflict of interest or appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to Vendor Terms and conditions, and the Vendor shall not engage in any conduct or permit any Third Party from engaging in any conduct that would violate that chapter.
- 3.14. **Use of Third Parties.** All subcontracts related to Cloud Services provided hereunder shall be subject to the terms and conditions of this TOS and to any conditions of approval that the Governmental Entity may deem necessary. All subcontracts shall contain provisions which allow the Governmental Entity to access the Vendor Contractor's books, documents, and records and for inspections of work, as required of the Vendor herein. No subcontract or delegation of work shall relieve or discharge the Vendor from any obligation, provision, or liability hereunder. The Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any and all Vendor Contractors. Any action of a Vendor Contractor, which, if done by the Vendor, would constitute a breach Vendor Terms, shall be deemed a breach by the Vendor and have the same legal effect.
- 3.15. **Independent Contractors.** The Vendor is an independent contractor of the Governmental Entity. No Vendor Personnel shall be considered employees of the Governmental Entity.
- 3.16. **Additional Terms.** Notwithstanding any provisions appearing in the Vendor Terms to the contrary, none of the following types of provisions shall have any effect on or be enforceable against any Governmental Entity or any of its employees, officers, board members, agents, representatives, officials, or other like individuals, and shall be void. These provisions are any provision:
- 3.16.1. Requiring any total or partial compensation or payment for lost profit or liquidated damages by any Governmental Entity, or its employees, officers, board members, agents, representatives, officials, or other like individuals if a Purchasing Instrument is terminated before its ordinary period;

- 3.16.2. Requiring any Governmental Entity to maintain any type of insurance either for the benefit of the Governmental Entity or the Vendor's benefit;
- 3.16.3. Granting the Vendor a security interest in the property of any Governmental Entity or any of their employees, officers, board members, agents, representatives, officials, or other like individuals;
- 3.16.4. Limiting or adding to the time period within which claims can be made or actions can be brought against any Governmental Entity where applicable law, rule, regulation or order establishes a specific time period;
- 3.16.5. Limiting or purporting to govern the selection and approval of counsel or approval of any settlement with respect to any claims in which a Governmental Entity or any of its employees, officers, board members, agents, representatives, officials, or other like individuals is named as a party;
- 3.16.6. Obligating any Governmental Entity, or any of their employees, officers, board members, agents, representatives, officials, or other like individuals to pay costs of collection or attorney's fees;
- 3.16.7. Requiring any Governmental Entity or any of their employees, officers, board members, agents, representatives, officials, or other like individuals to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury;
- 3.16.8. Bestowing any right or incurring any obligation that is beyond the duly granted authority of any Governmental Entity to bestow or incur;
- 3.16.9. Establishing a presumption of severe or irreparable harm to the Vendor by the actions or inactions of the Governmental Entity;
- 3.16.10. That fail to comply with all applicable federal, state, and local laws, regulations, ordinances, and orders;
- 3.16.11. Requiring any Governmental Entity to waive any immunity available to it by law;
- 3.16.12. Requiring that any Governmental Entity, which is generally tax exempt, be responsible for payment of any taxes, duties, or penalties;
- 3.16.13. Obligating any Governmental Entity beyond any properly approved, appropriated, or allocated funding;
- 3.16.14. Permitting unilateral modification of the terms and conditions of Vendor Terms;
- 3.16.15. Requiring or stating that the terms of the Vendor Terms shall supersede or prevail over the terms of the Agreement or these TOS;
- 3.16.16. Requiring any Governmental Entity to accept any update, upgrade, or Enhancement or condition the receipt of any update, upgrade, or Enhancement on the receipt of additional payment;
- 3.16.17. Prohibiting any Governmental Entity from transferring or assigning to any other Governmental Entity any right or interest;

- 3.16.18. Granting the Vendor, any Vendor Contractor, or any Vendor Personnel the right to audit or examine the books, records, or accounts of the Governmental Entity other than as may be required by law.

[End of Attachment A]






REVISED: NASPO PA AR3764_Tyler Technologies_State of Iowa 5.13.24

Final Audit Report

2024-05-14

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