

**Iowa Office of Chief Information Officer  
Contracts Declaration & Execution (“CD&E”)**

<b>Title of Contract:</b> State of Iowa Endpoint Managed Services Agreement	<b>Contract Number:</b> 2018BUS104	
<b>State Agency’s Name:</b> Iowa Office of Chief Information Officer (“OCIO”)		
<b>Vendor’s Name:</b> XXXXXX		
<b>Contract to Begin:</b> Start Date	<b>Date of Expiration:</b> End Date	<b>Annual Extensions:</b> Seven (7) Annual One Year Renewals
<p><b><u>Documents Incorporated/Order of Precedence.</u></b> The attached agreement numbered Contract Number <b>2018BUS104 (“Agreement”)</b> and corresponding attachments, incorporated by reference as if set forth therein, and any other documents incorporated by reference into the Agreement, together comprise the terms and conditions governing the relationship between the Parties.</p> <p><b>1. The State of Iowa Endpoint Managed Services Agreement (“Master Agreement”)</b></p> <ul style="list-style-type: none"> <li><b>a. Attachment A:</b> Goods and Services Schedule;</li> <li><b>b. Attachment(s) B:</b> Special Terms and Conditions Applicable to Software/Maintenance and Support Services;</li> <li><b>c. Attachment(s) C:</b> Special Terms and Conditions Applicable to Virtual Desktop Support Services;</li> <li><b>d. Attachment(s) D:</b> Special Terms and Conditions Applicable to Professional Services;</li> <li><b>e. Attachment(s) E:</b> Purchasing Instruments (Purchase Order(s)/Statement(s) of Work);</li> <li><b>f. Attachment F:</b> Insurance;</li> <li><b>g. Attachment(s) G:</b> Special Terms and Conditions--Ancillary Agreements addressing compliance concerns of individual Governmental Entities, including HIPAA Business Associate Agreement, IDR Confidentiality, etc.;</li> <li><b>h. Attachment(s) H:</b> Special Terms and Conditions Applicable to Vendor’s Service Level Agreement (“SLA”).</li> </ul>		

In the case of any conflict or inconsistency between the provisions of the foregoing documents, the RFP, or the Proposal, any inconsistency or conflict shall be resolved as follows: first, except as otherwise provided in the Master Agreement, by giving preference to the specific provisions of any Special Terms and Conditions; second, by giving preference to the terms of the Master Agreement; third, by giving preference to the specific provisions of any Purchasing Instrument; fourth, by giving preference to the specific provisions of any other schedules, exhibits or other attachments; fifth, by giving preference to the specific provisions of the RFP; and sixth, by giving preference to the specific provisions of the Proposal (excluding any Vendor Exceptions that are not expressly made a part of the Agreement).

**Notes:**

- This Agreement does not guarantee any minimum level of purchases or any minimum amount of compensation;
- This Agreement is available to any Governmental Entity of the State of Iowa, including State Agencies and political subdivisions;

**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:** XXXXXXXX

**By (Authorized Signature)**

**Date Signed**

**Printed Name and Title of Person Signing**

**Address**

**State of Iowa, acting by and through the Office of the Chief Information Officer**

**By (Authorized Signature)**

**Date Signed**

**Printed Name and Title of Person Signing**  
**Robert von Wolfradt, Chief Information Officer**

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**Address**

**Iowa Office of the Chief Information Officer**

**Hoover Bldg. – Level B**

**1305 E Walnut St.**

**Des Moines, IA 50319**

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## State of Iowa Endpoint Managed Services Agreement

This Agreement for endpoint managed services and related software and equipment (“**Agreement**”), is made and is effective as of the date identified on the Contract Declarations and Executions Page (“**Effective Date**”), by and between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer (“**OCIO**”), and **XXXXXX**, a corporation organized under the laws of **XXXXXX** (“**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. The Parties agree to the following:

### 1. Purpose/Availability, Authority, Term, and Relationship between this Agreement and Individual Purchasing Instruments.

- 1.1. Purpose/Availability. This Agreement establishes the terms and conditions pursuant to which Governmental Entities located in the State of Iowa may procure Deliverables identified in this Agreement and the Proposal. This Agreement only permits such purchasing and does not obligate any Governmental Entity to acquire any Deliverables provided by Vendor hereunder.
- 1.2. Authority. OCIO enters this Agreement pursuant to Iowa Code 8B.24(5)(e) (2017). This authority authorizes OCIO to enter into agreements for the purchase of Information Technology using competitive bidding procedures in the same manner provided under chapter 8A, subchapter III.
- 1.3. 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, OCIO shall have the option to extend/renew this Agreement for up to nine (9) additional one-year renewal terms. The decision to extend the Agreement will be at the sole option of OCIO and may be exercised by OCIO by providing written notice to Vendor.
- 1.4. Relationship between this Agreement and Individual Purchasing Instruments. Each Purchasing Instrument executed hereunder shall be deemed, upon its execution, 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 OCIO 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 owed Vendor under this Agreement. In addition, notwithstanding any other provision of this Agreement to the contrary, OCIO 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.

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 applicable Governmental Entity has determined a portion of Deliverables provided under a Purchasing Instrument satisfy the Governmental Entity’s Acceptance Tests. **“Final Acceptance”** means the applicable Governmental Entity has determined all Deliverables provided under a Purchasing Instrument satisfy the Governmental Entity’s Acceptance Tests. **“Non-acceptance”** means the applicable Governmental Entity has determined that a portion of Deliverables provided under a Purchasing Instrument have not satisfied the Governmental Entity’s Acceptance Tests.
- 2.2. **“Acceptance Criteria”** means the Specifications, goals, performance measures, testing results and/or other criteria designated by the applicable Governmental Entity and against which Acceptance Tests are conducted.
- 2.3. **“Acceptance Tests”** or **“Acceptance Testing”** means the tests, reviews and other activities that are performed by or on behalf of the applicable Governmental Entity to determine whether Deliverables meet Acceptance Criteria or otherwise satisfy the applicable Governmental Entity, as determined by the applicable Governmental Entity in its sole discretion. Acceptance Testing may include testing of individual or multiple units, modules or components, system or integration testing, user-acceptance testing, load/stress testing, system security testing, network testing, recovery/backup testing, data transfer, migration and conversion testing, and Documentation review.
- 2.4. **“Authorized Contractors”** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by any Governmental Entity to use, maintain, support, modify, enhance, host, or otherwise assist a Governmental Entity with a System or other Deliverables.
- 2.5. **“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; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.
- 2.6. **“Customer Data”** means all information, data, materials, or documents (including Confidential Information of or belonging to the applicable Governmental Entity)

originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from a Governmental Entity making purchases hereunder, its end users, or its Authorized Contractors related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed or used by Vendor in connection with any Deliverables provided hereunder and all originals and copies of any the foregoing.

- 2.7. **“Customer Property”** means any property of or belonging to a Governmental Entity making purchases hereunder, including Customer Data and Customer-Owned Deliverables, software, hardware, programs or other property possessed, owned, or maintained by a Governmental Entity.
- 2.8. **“Customer-Owned Deliverables”** means any Deliverables specifically developed by Vendor at the direction of the Governmental Entity, 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.
- 2.9. **“Deficiency”** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related to a Deliverable, including any failure of a Deliverable to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.
- 2.10. **“Deliverables”** means all of the goods, Services, Equipment, work, work product, items, materials, and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor, directly or indirectly, in connection with this Agreement, including any Systems, Software, or Equipment provided by Vendor hereunder.
- 2.11. **“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.
- 2.12. **“Enhancements”** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications or other enhancements made to or with respect to a System or other Deliverable (including any new releases or versions related thereto) provided or made available by Vendor, directly or indirectly, under this Agreement or any other agreement for related Systems or Deliverables, and all changes to the Documentation and Source Code made by Vendor, directly or indirectly, as a result of such Enhancements.
- 2.13. **“Equipment”** means any equipment or hardware to be provided by Vendor, directly or indirectly, under this Agreement.
- 2.14. **“Governmental Entity”** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity shall also include agencies, independent agencies, the Judicial Branch, courts, boards,

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

- 2.15. **“Proposal”** Vendor’s Response to the RFP dated **XXXX**.
- 2.16. **“Purchasing Instrument”** means documentation issued by a Governmental Entity to Vendor for the purchase of Deliverables under this Agreement, including a Purchase Order or Statement of Work, attached hereto as an **Exhibit E** and that identifies the Deliverables to be purchased and any other requirements deemed necessary by the applicable Governmental Entity, including any corresponding compensation and delivery dates. Each Purchasing Instrument is incorporated into this Agreement as if fully set forth herein upon execution. Notwithstanding the foregoing, any terms and conditions included on Vendor’s standard forms or invoices shall be null and void.
- 2.17. **“Request for Proposal”** or **“RFP”** means the State of Iowa’s Request for Proposal # **XXXXX**.
- 2.18. **“Services”** means:
- 2.18.1. Any **“Support Services”** identified in the RFP and further described and additionally subject to the Special Terms and Conditions of **Attachment B** and any corresponding attachments thereto;
  - 2.18.2. Any **“Virtual Desktop Support Services”** identified in the RFP and further described and additionally subject to the Special Terms and Conditions in **Attachment C** and any corresponding attachments thereto;
  - 2.18.3. Any Information Technology Professional Services available on the Schedule and further described and additionally subject to the Special Terms and Conditions in **Attachment D**;
  - 2.18.4. Any combination of any of the foregoing as described in a Purchasing Instrument.
- 2.19. **“Software”** means all software, programs, applications, modules and components provided by Vendor, directly or indirectly, hereunder and/or which comprise a System or other Deliverables provided hereunder, including all Third Party Software and any other software, programs, applications, modules and components listed in any Purchasing Instrument(s), in all forms, including Source Code and object code, all related Documentation and Enhancements, and all copies of the foregoing.
- 2.20. **“Source Code”** means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to any program, application or software (including the Software). Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or

useful for purposes of maintaining, repairing or making modifications or enhancements to any source code, program, application or software (including the Software).

- 2.21. **“Special Terms and Conditions”** means any attachment hereto entitled, in whole or in part, **“Special Terms and Conditions.”**
- 2.22. **“Specifications”** mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to Deliverables stated or expressed in this Agreement, a Purchasing Instrument, to the extent applicable the RFP and Proposal, and the Documentation. Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. Specifications shall include, without limitation, the existing and planned data model for any System procured hereunder, including all data elements, logical relationships and an entity relationship diagram, the functional requirements specifications and a functional design for any such System, including descriptions of each System function and a functional hierarchy diagram, a definition of the existing and planned System modules, including a diagram showing the system design, interface design document including descriptions of all internal and external interfaces, final specifications of System architecture, including Equipment, Software, and operating system(s) for all system components and interfaces, the detailed System security plan, detailed business and technical requirements, detailed system planning & design, functional hierarchy diagram, entity relationship diagram, data conversion and migration protocols, Software and Equipment configuration plan. The Specifications are incorporated into this Agreement by reference as if fully set forth herein.
- 2.23. **“System”** means any system designed, developed, and/or provided by Vendor, directly or indirectly, under this Agreement as more fully described in a Purchasing Instrument(s), which may be comprised of a combination of Software, Equipment, and other Deliverables provided or licensed by Vendor to Governmental Entities hereunder.
- 2.24. **“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.
- 2.25. **“Third Party Equipment”** means any Equipment acquired from Third Parties. Third Party Software shall be considered Equipment under this Agreement.
- 2.26. **“Third Party Software”** means software, firmware, and other programs licensed or acquired from Third Parties. Third Party Software shall be considered Software under this Agreement.
- 2.27. **“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 Deliverables under this Agreement.
- 2.28. **“Vendor Contractor(s)”** means any of Vendors 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 Deliverables under this Agreement.



- 2.29. **“Warranty Period”** means, except as otherwise provided in the Special Terms and Conditions governing Software Licenses/Maintenance and Support, the one year period commencing the date the applicable Governmental Entity provides Vendor written notice of Final Acceptance of the Deliverables or any related System into which such Deliverables are incorporated, whichever occurs later.

### **3. Scope of Work.**

- 3.1. Purchasing Instruments. Vendor shall commence and complete all work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Specifications and other requirements specified in this Agreement, including those specified in a Purchasing Instrument, and any related attachments or documents thereto, such as a project plan or other similarly captioned document. Such Deliverables may include, but are not limited to:
- 3.1.1. Endpoint Device Managed Services;
  - 3.1.2. Maintenance and Support Services;
  - 3.1.3. Information Technology Professional Services;
  - 3.1.4. Software;
  - 3.1.5. Equipment; and
  - 3.1.6. A System or other Deliverables comprised of a combination of any of the foregoing as further described in the applicable Purchasing Instrument(s).
- 3.2. Amendments to Purchasing Instruments. A Purchasing Instrument may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of Vendor and the applicable Governmental Entity.
- 3.3. Delivery. Vendor shall deliver to the applicable Governmental Entity all Deliverables identified or described in a Purchasing Instrument within the timeframes set forth therein. To the extent any Deliverables are mailed or shipped, Vendor 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. Vendor acknowledges and agrees that it shall deliver and provide to the applicable Governmental Entity all Source Code and Documentation related to any Software or other Deliverables that are created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor hereunder, directly or indirectly, unless otherwise agreed to in writing by the applicable Governmental Entity.
- 3.4. Performance Standards. Except as otherwise set forth herein, including in any applicable Special Terms and Conditions, performance standards and related payment, monitoring, and review provisions shall be as set forth in the applicable Purchasing Instrument.
- 3.5. Applicable Governmental Entity Not Required to Accept or Install Enhancements. Vendor shall not condition any Governmental Entity’s rights or Vendor’s obligations under this Agreement, or any other contract related to Deliverables, on a Governmental

Entity accepting or installing any Enhancements provided by Vendor, directly or indirectly.

3.6. Equipment. Vendor shall identify and recommend to the applicable Governmental Entity all Equipment, including Third Party Equipment, necessary or desirable to be acquired for the effective use of any System or other Deliverables provided hereunder. At the applicable Governmental Entity's sole discretion, and solely to extent permitted by law/there is a valid procurement basis to do so, the applicable Governmental Entity may procure such Equipment through Vendor under this Agreement. Vendor represents and warrants the following with respect to all Equipment provided to a Governmental Entity upon delivery:

3.6.1. Such Equipment will be new and unused;

3.6.2. Title to such Equipment will be free and clear of all liens, security interests, charges and encumbrances or other restrictions;

3.6.3. A Governmental Entity's use and possession of such Equipment will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Vendor; and

3.6.4. Such Equipment will be free of any rightful claim of any Third Person or entity based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

3.7. Software. Vendor shall identify and recommend to the Department all Software, including Third Party Software, necessary or desirable to be acquired for the effective use of any System or other Deliverables provided hereunder. At the applicable Governmental Entity's sole discretion, and solely to extent permitted by law/there is a valid procurement basis to do so, the applicable Governmental Entity may obtain a license to such Software or, to the extent Third Party Software is involved, require Vendor to license or sublicense the Third Party Software to or on behalf of the applicable Governmental Entity at the applicable Governmental Entity's expense. In the latter case, Vendor shall ensure that all Third Party Software is licensed to the applicable Governmental Entity pursuant to a license agreement, the terms and conditions of which are acceptable to the applicable Governmental Entity.

3.8. Manufacturers' Warranties. Vendor shall take all action necessary to ensure that applicable Governmental Entities are able and entitled to receive and enjoy all warranties, indemnities, or other benefits associated with Third Party Software or Third Party Equipment. At the applicable Governmental Entity's request, Vendor shall assign to the applicable Governmental Entity all of the licensor's and manufacturer's warranties, indemnities, or other associated benefits pertaining to Third Party Software or Third Party Equipment under any related license or other agreement between Vendor and the applicable Third Party.

#### **4. Compensation and Additional Rights and Remedies.**

4.1. Endpoint Device Goods and Services Schedule. The Vendor's Endpoint Device Goods and Services Schedule (the "Schedule") is attached hereto as **Attachment A**. Vendor may

only provide Endpoint Device Goods and Services under this Agreement at or beneath the rates as identified in Schedule A and/or any amendments thereto.

- 4.2. Amendments to the Schedule. **Attachment A** may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of Vendor and OCIO.
- 4.3. Minimum Price/Price Reductions. Notwithstanding anything in this Agreement to the contrary, including any Special Terms or Conditions, Vendor may not charge Governmental Entities greater prices for Deliverables than those prices set forth in **Attachment A**. Nothing in this Agreement shall preclude Vendor from charging Governmental Entities prices/rates less than those set forth in **Attachment A**.
- 4.4. Compensation. In consideration of Vendor providing Governmental Entities Deliverables under this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such Deliverables in accordance with the prices/rates set forth in this Agreement, the RFP, the Schedule and/or applicable Purchasing Instrument(s), subject to all terms and conditions of this Agreement, including, without limitation Section 4.5 (Invoices). Except to the extent otherwise permitted herein, the applicable 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). Vendor is not entitled to payment for any Deliverable(s), in whole or in part, provided under this Agreement or any Purchasing Instrument(s) if the applicable Governmental Entity reasonably determines that such Deliverable(s) has not been satisfactorily or completely delivered or performed, or that such Deliverable(s) fails to meet or conform to any applicable Specifications or that there is a material Deficiency with respect to such Deliverable(s). In no event shall a Governmental Entity be obligated to pay Vendor any fees, costs, compensation or other amounts in excess of the amount specified in a Purchasing Instrument for any one or more Deliverable(s), unless the applicable Governmental Entity otherwise agrees to pay such fees, costs, compensation, or other amounts pursuant to a written Change Order or an amendment to the applicable Purchasing Instrument executed by the applicable Governmental Entity. No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the applicable 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 applicable Governmental Entity, OCIO, or the State of Iowa.
- 4.5. Invoices. Upon receipt of written notice of Acceptance from the applicable Governmental Entity with respect to one or more Deliverable(s), Vendor shall submit an invoice to the applicable Governmental Entity requesting payment of the fees or other compensation specified in the Purchasing Instrument associated with such Deliverable(s). 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 applicable Governmental Entity. The applicable Governmental Entity shall verify Vendor's performance/provisioning of Deliverables outlined in the invoice

before making payment. Except for payments identified as authorized prepayments in a Purchasing Instrument agreed to by the applicable Governmental Entity, the applicable Governmental Entity shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code 8A.514 and corresponding implementing rules, regulations, and policies. The applicable 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 § 8A.514. Notwithstanding anything herein to the contrary, the applicable Governmental Entity shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the applicable Governmental Entity believes the invoice is inaccurate or incorrect in any way.

- 4.6. Reserved.
- 4.7. Erroneous Payments and Credits. Vendor shall promptly pay or refund to the applicable 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 applicable Governmental Entity of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the applicable Governmental Entity under this Section, the applicable 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 applicable Governmental Entity may, in its sole discretion, elect to have Vendor apply any amounts due and owing the Governmental Entity under this Section against any amounts payable by the applicable Governmental Entity under this Agreement.
- 4.8. Reimbursable Expenses. Subject to applicable laws, rules, policies, and procedures, and solely to the extent required by a Purchasing Instrument, a Governmental Entity shall reimburse Vendor for the actual, reasonable, and allowable costs of transportation, meals, and lodging incurred by Vendor in connection with travel incurred by Vendor in providing Services to the applicable Governmental Entity; provided, however that:
- 4.8.1. An estimate of all such costs have been submitted by Vendor and approved by the applicable Governmental Entity in advance of any such travel; and
- 4.8.2. Notwithstanding any such approval by the applicable Governmental Entity, any reimbursement for allowable transportation, meals, and lodging shall not exceed the maximum reimbursement rates permitted for the applicable Governmental Entity's personnel/Vendors generally (*See, e.g., State Accounting Policy and Procedures Manual 210.245 and 210.305 for example of State of Iowa reimbursement policy*).

Vendor agrees to utilize the most economical and reasonable mode of transportation available and shall comply with any other travel policies, procedures, or requirements applicable to the Governmental Entity's personnel/Vendors generally. In order to obtain reimbursement for travel expenses, Vendor must submit a copy and itemized receipts and any other supporting documentation as may be requested by the applicable Governmental Entity with respect to all costs and expenses submitted by Vendor for reimbursement. The Governmental Entity or its designee reserves the right to audit all reimbursement requests and to withhold or deny reimbursement for Vendor's failure to comply with the requirements of this Section, including applicable travel laws, rules, policies, and

procedures. Except for the foregoing, there shall be no other 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, and all other operational and administrative costs and expenses.

- 4.9. Set-off Against Sums Owed by Vendor. In the event Vendor owes a Governmental Entity any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the applicable 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.
- 4.10. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, a 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:
- 4.10.1. Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or
  - 4.10.2. Any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency.
- No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Governmental Entity under this Agreement.
- 4.11. Correction/Cure. A Governmental Entity may correct any Deficiencies 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 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. A Governmental Entity may procure the Deliverable(s) reasonably necessary to correct any Deficiencies 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 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 or work product of Vendor's.
- 4.12. Error Correction. With respect to each notice from an applicable Governmental Entity to Vendor during the term of this Agreement that notifies Vendor that any Deliverable(s) provided by Vendor, including those previously accepted by the applicable Governmental Entity, contains or experiences a Deficiency, Vendor shall, at no cost to the Governmental Entity, promptly:
- 4.12.1. Correct the Deficiency and repair the affected Deliverable(s); and

- 4.12.2. Provide the Governmental Entity with all necessary and related materials related to such repaired or corrected Deliverable(s), including the provision of new Source Code, master program disks or other media acceptable to the Governmental Entity, and related Documentation.
- 4.13. Administrative Fees. Without affecting the prices/rates specified in this Agreement or **Attachment A**, Vendor shall provide to OCIO a 1.00% administrative fee on all sales made against this Agreement. This 1.00% administrative fee shall be paid quarterly to:

**Attn:** Business Services Division Administrator

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Iowa Office of the Chief Information Officer

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Hoover State Office Building, Level B

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Des Moines, IA 50319

Payment shall be made in accordance with the following schedule:

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

**5. Acceptance Tests, Project Management, and Contract Administration.**

- 5.1. Acceptance Testing. All Deliverables shall be subject to the applicable 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 applicable Governmental Entity certifying that the Deliverable(s) meets and conforms to applicable Specifications 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 Specifications prior to delivering such notice to the applicable Governmental Entity. At a Governmental Entity’s request, Vendor shall assist in performing Acceptance Tests at no additional cost to the Governmental Entity. Within a reasonable period of time after a 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 evaluated during such Acceptance Testing. If the Governmental Entity determines that a Deliverable(s) 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) 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 with respect to any Deliverable(s) that Vendor has attempted to correct or repair pursuant to this Section that such Deliverable fails 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 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
- 5.1.4. Terminate the applicable Purchasing Instrument and/or seek any and all available remedies, including damages. Notwithstanding any other provisions of this Agreement related to termination, a Governmental Entity may terminate a Purchasing Instrument in its entirety pursuant to this Section without providing Vendor any notice or opportunity to cure.

A 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 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. Except as otherwise set forth in a Purchasing Instrument, the following project management and reporting processes and procedures shall apply by default:

- 5.2.1. *Vendor or Project Manager*. At the time of execution of a Purchasing Instrument, Vendor shall designate, in writing, a Project Manager acceptable to the applicable Governmental Entity to serve until Final Acceptance is given by 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 applicable 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 the

applicable Purchasing Instrument. 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/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 under the applicable Purchasing Instrument and will be available either in person, by telephone, or email to respond promptly during the business day to inquiries from the applicable Governmental Entity.

- 5.2.2. *Review Meetings.* Beginning upon the execution of a Purchasing Instrument, 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. 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 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 under this Agreement.
- 5.2.3. *Reports.* Vendor shall provide the applicable 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 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.* A 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 that the Governmental Entity may have. A Governmental Entity's failure to identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance or constitute Acceptance under this Agreement.
- 5.2.5. *Change Order Procedure.* A Governmental Entity may at any time request a modification to the scope of a Purchasing Instrument using a change order. The following procedures for a change order shall be followed:
- 5.2.5.1. *Written Request.* The Governmental Entity shall specify in writing the desired modifications to the Purchasing Instrument with the same degree of specificity as in the original Purchasing Instrument.



5.2.5.2. Vendor’s Response. Vendor shall submit to the Governmental Entity any proposed modifications to the Purchasing Instrument and a firm cost proposal, if applicable, for the requested change order within five (5) business days of receiving the Governmental Entity’s change order request.

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

5.3. Administration of Agreement. OCIO shall monitor and review Vendor’s performance under this Agreement to ensure compliance with this Agreement and that the continuation of this Agreement remains in the best interests of the State and the Governmental Entities making purchases hereunder. Such review and monitoring shall include OCIO’s review and assessment of Deliverables provided hereunder and invoices and reports furnished by Vendor pursuant to this Agreement. In order to aid in such review, the following terms shall apply:

5.3.1. *Quarterly Reports.* Vendor shall provide OCIO with quarterly reports summarizing the Deliverables/projects it is currently providing to/working on with Governmental Entities under this Agreement. Except as otherwise mutually agreed to by the Parties, such Quarterly Report shall briefly describe the nature of Deliverables/projects, the general status of Deliverables/projects, the most significant problems encountered with respect to Deliverables/projects and their disposition, and an estimated date of delivery/completion of Deliverables/projects. Quarterly reports shall be provided by Vendor in accordance with the following schedule:

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

Vendor shall maintain records of such reports during the term of this Agreement, including all extensions and renewals.

5.3.2. *Review Meetings.* Vendor and OCIO shall meet quarterly, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor on Deliverables/projects Vendor is currently providing to/working on with Governmental Entities under this Agreement, and to discuss Vendor’s performance generally. At each review meeting, Vendor shall provide a status report, which shall include, at minimum, the information described in Section

5.3.1 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.

5.3.3. *Problem Reporting Omissions.* OCIO's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that OCIO or any other Governmental Entity may have.

## 6. Ownership and Intellectual Property.

- 6.1. Ownership of Vendor-Owned Deliverables. Except as specifically granted in a Purchasing Instrument, other agreement (including but not limited to any agreement between Vendor and the State in any way resulting from or related to the RFP), 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**”).
- 6.2. License to Vendor-Owned Deliverables. Except as otherwise provided in and subject to this Agreement, including any Special Terms and Conditions, Vendor hereby grants to the applicable Governmental Entity, OCIO, the State, and Authorized Contractor's of either of the foregoing a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license to use, reproduce, modify, distribute copies of, perform, display, host, and prepare derivative works based upon Vendor-Owned Deliverables provided hereunder. Except as otherwise provided in and subject to this Agreement, including any Special Terms and Conditions, the foregoing grant shall be in addition to (and shall not be construed to limit) any rights, licenses, and privileges as may be granted in any license agreement(s) applicable to Vendor-Owned Deliverables. Vendor agrees that neither Vendor nor any agent, affiliate, or subcontractor of Vendor shall charge any Governmental Entity any royalty, license fee, or similar charge for any Vendor-Owned Deliverable that was created or developed under a separate agreement using funds provided by the U.S. Federal Government whether through a cooperative agreement or otherwise.
- 6.3. Ownership and Assignment of other Deliverables. Vendor hereby irrevocably assigns, transfers, and conveys to the commissioning Governmental Entity all right, title and interest in and to Customer-Owned Deliverables. Vendor represents and warrants that the applicable 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.

- 6.4. Waiver. To the extent any of Vendor's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Vendor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the applicable Governmental Entity's rights in and to Customer-Owned Deliverables.
- 6.5. Acknowledgement. Vendor acknowledges and agrees that the applicable Governmental Entity, as owner and assignee of Customer-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation:
- 6.5.1. 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;
  - 6.5.2. Adapt, change, modify, edit or use Customer-Owned Deliverables as the applicable Governmental Entity sees fit, including in combination with the works of others, prepare derivative works based on Customer-Owned Deliverables, and publish, display, perform 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
  - 6.5.3. 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.
- 6.6. Further Assurances. At the applicable Governmental Entity's or State'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 Governmental Entity or State to:
- 6.6.1. Establish, perfect or protect the applicable Governmental Entity's or State's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 6.3, and
  - 6.6.2. 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 applicable Governmental Entity or State is unable, after reasonable effort, to secure Vendor's signature on any letters patent, copyright, or other analogous protection relating to the Customer-Owned Deliverables, for any reason whatsoever, Vendor hereby irrevocably designates and appoints the applicable Governmental Entity and its duly authorized officers, employees and agents, as Vendor's agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and

issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Vendor.

- 6.7. Third Party Intellectual Property. Except as otherwise provided herein, in the event a Deliverable(s) is intellectual property owned by a Third Party (“**Third Party Intellectual Property**”), Vendor shall secure on behalf of and in the name of the applicable Governmental Entity, an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the Third Party Intellectual Property, and to authorize others to do the same on the applicable Governmental Entity’s behalf, including its Authorized Contractors. In the event that a Deliverable(s) created by Vendor under this Agreement is a derivative work based upon Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Vendor shall secure on behalf of and in the name of the applicable Governmental Entity an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the pre-existing elements of such Third Party Intellectual Property, and to authorize others to do the same on the applicable Governmental Entity’s behalf.
- 6.8. Rights of the Federal and State Government. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Agreement and the copyright in and to such Deliverables. Similarly, in addition to any rights granted hereunder, Vendor and the applicable Governmental Entity grants to or shall secure on behalf of OCIO and the State and their Authorized Contractors, to the extent applicable, an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host Customer-Owned Deliverables and any related Third Party Intellectual Property.
- 6.9. 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. Customer Property shall at all times remain the property of the applicable Governmental Entity.
- 6.10. Additional Rights. With respect to any license granted to a Governmental Entity pursuant to this Agreement, such grant of license shall be deemed to include the following grant of rights to the applicable Governmental Entity:
- 6.10.1. Use, install, host, access, execute, copy, modify, edit, format, translate, maintain, support, repair, enhance, test, demonstrate, and display the Deliverables or System, and prepare derivative works based on the Deliverables or System, in all media now known or hereafter created, including the right to host or install the Deliverables or System on any one or more of the computers, data center locations, networks, Internet or intranet

sites, servers or other systems of the applicable Governmental Entity or any of its Authorized Contractors (“**Licensee Systems**”).

- 6.10.2. Combine and use the Deliverables or System with other software, firmware, other code, including public code, and hardware;
- 6.10.3. The same grant of right rights granted to the applicable Governmental Entity to its Authorized Contractors; and
- 6.10.4. The right to permit access to and use of the Deliverables or System and its functions by end users.

The foregoing license grants and rights conferred herein include a license under any current or future patents owned or licensable by Vendor or an applicable Third Party to the extent necessary for a Governmental Entity: (i) to exercise any license right granted herein; and (ii) to combine the Deliverables or System with any other Deliverables or any other hardware or software. For purposes of this Agreement, if a Governmental Entity makes any modifications or Enhancements to the Deliverables or System, (whether directly or indirectly through an Authorized Contractor), the Governmental Entity shall own such modifications or Enhancements.

**7. Representations, Warranties, and Covenants.** To extent applicable, the following representations, warranties, and covenants shall apply to the extent any Special Terms and Conditions do not provide more specifically tailored representations, warranties, and covenants applicable to particular Deliverables:

- 7.1. Deliverables Free of Deficiencies. Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement during the Warranty Period. During the Warranty Period, Vendor shall, at its expense, repair, correct, or replace any Deliverable(s) that contains or experiences material Deficiencies or fails to meet, conform to, or operate in accordance with Specifications within ten (10) days of receiving notice of such Deficiencies or failures from the applicable Governmental Entity. In the event Vendor is unable to repair, correct, or replace such Deliverable(s) to the applicable Governmental Entity’s satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverable(s). The foregoing shall not constitute an exclusive remedy under this Agreement, and the applicable 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 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 applicable 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 Deficiency during the Warranty Period.
- 7.2. Fitness for Intended Purpose. Vendor represents and warrants that it is fully aware of the applicable Governmental Entity’s business requirements and intended purposes and uses

for the Deliverables, and the Deliverables shall satisfy such requirements, including all Specifications, in all material respects and are fit for such intended purposes and uses.

- 7.3. Quiet Enjoyment. Vendor represents and warrants that: (i) all Deliverables, excluding Third-Party Software or Third Party Equipment, shall be wholly original with and prepared solely by Vendor; (ii) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide Deliverables to any Governmental Entity hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed any Governmental Entity hereunder without violating any rights of any Third Party; (iii) Vendor has not previously and will not grant any rights in any Deliverables to any Third Party that are inconsistent with the rights granted to any Governmental Entity herein; and (iv) the applicable Governmental Entity shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption or interruption.
- 7.4. Intellectual Property. Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) any 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 the Deliverables. Vendor shall inform applicable Governmental Entities and OCIO in writing immediately upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, Vendor shall, at the applicable Governmental Entity's request and at Vendor's sole expense: (i) procure for the applicable Governmental Entity the right or license to continue to use the Deliverable(s) at issue; (ii) replace such Deliverable(s) with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation, or misappropriation; (iii) modify or replace the affected portion of the Deliverable(s) 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 applicable 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. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Governmental Entity and shall survive termination of this Agreement.
- 7.5. Preservation and Augmentation 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 Deliverables to be provided, or by provision of samples to the applicable Governmental Entity, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by Vendor.

- 7.6. 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 Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as the applicable Governmental Entity notifies Vendor of any Services performed in violation of this standard, Vendor shall re-perform the Services at no cost to the applicable 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 applicable Governmental Entity any fees or compensation paid to Vendor for the unsatisfactory services.
- 7.7. Compliance with Law. Vendor represents, warrants, covenants, and promises that Vendor, Vendor Contractors, and Vendor Personnel have complied with, and shall continue to comply with, and, to the extent applicable, the Deliverables 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:
- 7.7.1. 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, 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.
  - 7.7.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
  - 7.7.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
  - 7.7.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
  - 7.7.5. 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.

- 7.7.6. All applicable information technology standards, procedures, protocols, and other requirements, including applicable standards and requirements established by OCIO, *available at* <https://ocio.iowa.gov/standards>.
- 7.7.7. To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, the requirements set forth at: <https://das.iowa.gov/sites/default/files/procurement/pdf/IowaHSEMDAdditionalTermsAndConditions.pdf>.

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. 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 and OCIO may cancel, terminate, or suspend, in whole or in part, this Agreement, and any Governmental Entity may cancel, terminate, or suspend, in whole or in part, any Purchasing Instrument. In addition, OCIO may declare Vendor ineligible for future State contracts in accordance with authorized procedures or Vendor may be subject to other sanctions as provided by law or rule.

- 7.8. No Conflicts. Vendor represents, warrants, and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.
- 7.9. Up to Date on Payments. Vendor represents and warrants it is not in arrears with respect to the payment of any monies due and owing any Governmental Entity within the State of Iowa, including the payment of taxes and employee benefits, and covenants and warrants it will not become so during the term of this Agreement, or any extensions thereof.
- 7.10. Documentation. Vendor represents, warrants and covenants that for the duration of the Agreement and the Warranty Period, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains, and the Documentation will enable applicable Governmental Entities to use and maintain such Deliverable(s) for their intended purposes.
- 7.11. Cumulative Warranties. Except to the extent otherwise provided herein, Vendor's warranties provided in this Section 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 Governmental Entities.

## **8. Indemnification.**

- 8.1. Generally. Vendor and its successors and permitted assigns shall indemnify and hold harmless the applicable Governmental Entity and their employees, officers, board members, agents, representatives, and officials ("**Indemnitees**") from and against any



and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including any claims related to, resulting from, or arising out of:

- 8.1.1. Any violation or breach of any term or condition of this Agreement by 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 false, deceptive, or misleading; or
  - 8.1.2. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, Vendor Contractors, or Vendor Personnel; or
  - 8.1.3. Vendor's, Vendor Contractor's, or Vendor Personnel's performance or attempted performance of this Agreement; or
  - 8.1.4. Failure by Vendor, Vendor Contractors, or Vendor Personnel to comply with any applicable local, state, and federal laws, rules, ordinances, regulations, standards, or orders; or
  - 8.1.5. Any failure by Vendor or Vendor Contractors to make all reports, payments, and withholdings required by federal and state law with respect to Social Security, workers compensation, employee income and other taxes, fees or costs required by Vendor or Vendor Contractors to conduct business in the State;
  - 8.1.6. Any claim involving any personal injury or damage to property, including Customer Property, caused, in whole or in part, by Vendor, Vendor Contractors, or Vendor Personnel related to the work performed or any Deliverables Provided under this Agreement, including any Security Breach;
  - 8.1.7. Any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation or security; or
  - 8.1.8. 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 or any use thereof (or the exercise of any rights with respect thereto) ("**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)**").
- 8.2. Infringement Claim Additional Remedy. If the Indemnified Items, or any portion of them, become or are likely to become the subject of a Claim as provided in Section 8.1.8, then, in addition to paying any damages and attorney fees as required above, Vendor shall, at its option, either:
- 8.2.1. Immediately replace or modify the Indemnified Items, without loss of material functionality or performance, to make them non-infringing, or

- 8.2.2. Immediately procure for the applicable Governmental Entity the right to continue using the Indemnified Items pursuant to this Agreement.

Any costs associated with implementing either of the above alternatives will be borne by Vendor. If Vendor fails to provide one of the foregoing remedies within forty-five (45) days of notice of the Claim, in addition to any other remedies available to the applicable Governmental Entity under this Agreement, at law, or in equity, OCIO shall have the right, at its sole option, to terminate this Agreement and/or the applicable Governmental Entity shall have the right to terminate any related Purchasing Instrument and have Vendor refund to the applicable Governmental Entity all associated fees, compensation or other amounts paid by the applicable Governmental Entity.

- 8.3. Vendor's obligations under this Section are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.
- 8.4. Vendor's duties 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 is made or discovered by OCIO or any other Indemnitee.

## **9. Default and Termination.**

- 9.1. Termination for Cause by OCIO or Governmental Entities. OCIO may terminate this Agreement and the applicable Governmental Entity may terminate a Purchasing Instrument 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 OCIO's or the applicable Governmental Entity's notice of breach or any subsequent notice or correspondence delivered by OCIO or the applicable 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 liquidated damages. In addition, OCIO may terminate this Agreement and the applicable Governmental Entity may terminate a Purchasing Instrument effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:
- 9.1.1. 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;
  - 9.1.2. Vendor 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;
  - 9.1.3. Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;
  - 9.1.4. Vendor terminates or suspends its business;
  - 9.1.5. Vendor's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;

- 9.1.6. 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;
- 9.1.7. OCIO or the applicable Governmental Entity determines or believes Vendor has engaged in conduct that has or may expose OCIO, the State, or the applicable Governmental Entity to material liability;
- 9.1.8. Vendor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret; or
- 9.1.9. 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:
  - 9.1.9.1. Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
  - 9.1.9.2. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
  - 9.1.9.3. Making an assignment for the benefit of creditors;
  - 9.1.9.4. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or
  - 9.1.9.5. Taking any action to authorize any of the foregoing.

The right to terminate this Agreement pursuant to this Section shall be in addition to and not exclusive of other remedies available to OCIO, the State, or other Governmental Entities, and OCIO, the State, or other Governmental Entities shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

- 9.2. Termination for Cause by Vendor. Vendor may only terminate an applicable Purchasing Instrument upon written notice of the breach by the applicable Governmental Entity of any material term, condition, or provision of this Agreement, if such breach is not cured within sixty (60) days of the applicable Governmental Entity's receipt of Vendor's written notice of breach.
- 9.3. Termination for Convenience. Following thirty (30) days written notice, OCIO may terminate this Agreement in whole or in part and the applicable Governmental Entity may terminate 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 can be for any reason or no reason at all.
- 9.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, OCIO shall have the right to terminate this Agreement and the applicable Governmental Entity shall, upon written notice, have the right to terminate a Purchasing Instrument without penalty or liability and without any advance notice as a result of any of the following:
- 9.4.1. The legislature, governor, or other applicable governing body fail in the sole opinion of OCIO or the applicable Governmental Entity to appropriate funds sufficient to allow OCIO or the applicable 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; or
- 9.4.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by OCIO or the applicable Governmental Entity to make any payment hereunder are insufficient or unavailable for any other reason as determined by OCIO or the applicable Governmental Entity in its sole discretion; or
- 9.4.3. If OCIO's or the applicable 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; or
- 9.4.4. If OCIO's or the applicable Governmental Entity's duties, programs, or responsibilities are modified or materially altered; or
- 9.4.5. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects OCIO's or the applicable Governmental Entity's ability to fulfill any of its obligations under this Agreement or the applicable Purchasing Instrument or the operation of a System purchased hereunder.
- 9.5. Limitation of Payment Obligations. In the event of a termination of this Agreement or a Purchasing Instrument for any reason (except for termination by OCIO or a Governmental Entity pursuant to Section 9.1), the applicable Governmental Entity shall pay only those amounts, if any, due and owing to Vendor for 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 obligated to pay pursuant to this Agreement; provided however, that in the event of a termination pursuant to Section 9.4, the applicable 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 in no way limits the rights or remedies available to the applicable 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, a Governmental Entity shall not be liable, under any circumstances, for any of the following:

- 9.5.1. The payment of unemployment compensation to Vendor Personnel;
  - 9.5.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
  - 9.5.3. Any costs incurred by Vendor in its performance of the Agreement, including startup costs, overhead or other costs associated with the performance of the Agreement;
  - 9.5.4. 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;
  - 9.5.5. 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.
- 9.6. Vendor's Termination or Expiration Duties. Upon receipt of notice of termination, upon expiration, or upon request of the applicable Governmental Entity, Vendor shall:
- 9.6.1. Except as otherwise required pursuant to Section 9.7, Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as OCIO or the applicable Governmental Entity may require;
  - 9.6.2. Immediately cease using and return to the applicable Governmental Entity any property (including Customer Property) or materials, whether tangible or intangible, provided by a Governmental Entity to Vendor or prepared or developed by Vendor for the Governmental Entity hereunder;
  - 9.6.3. Immediately return to the applicable Governmental Entity any payments made by the Governmental Entity for Deliverables that were not rendered or provided by Vendor;
  - 9.6.4. Immediately deliver to OCIO and the applicable Governmental Entity any and all Deliverables, including Customer-Owned Deliverables, Source Code, object code, Software, and Documentation, for which the applicable Governmental Entity has a property interest and has made payment (in whole or in part) 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.

- 9.7. Vendor Cooperation/Transition Services. Vendor agrees that in connection with any termination or expiration of this Agreement or any Purchasing Instrument, Vendor will continue to perform such Services under this Agreement as OCIO or the applicable Governmental Entity may request for a transition period up to 365 days from the effective date of termination or expiration of this Agreement. As part of such request, OCIO or the applicable Governmental Entity will inform Vendor of the number of days during which Vendor will perform transition and other related Services under this Section (“**Transition Period**”). During the Transition Period, Vendor will take all actions as may be necessary or requested by OCIO or the applicable Governmental Entity to accomplish a complete and timely transition, including a full migration of Customer Data, from Vendor to the applicable Governmental Entity or any Authorized Contractor hired or utilized by the Applicable Governmental Entity to provide any replacement or similar Services or System (the “**New Contractor**”). Vendor will use its best efforts to cooperate with the applicable Governmental Entity and any New Contractor, and to fully comply with all requests of the Governmental Entity to effect a smooth and timely transition and to ensure there is no interruption of any Services, information, or transactions provided or conducted through any System. 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 applicable Governmental Entity or any New Contractor to assist in the effort to accomplish a successful, seamless and unhindered transition of any System, migration of Customer Data, and transfer of Vendor’s responsibilities under this Agreement. At the applicable Governmental Entity’s request, Vendor shall, subject to the terms of any Third Party contracts, procure for the applicable Governmental Entity any third-party authorizations or licenses necessary to grant the applicable Governmental Entity and any New Contractor the use and benefit of any contracts between Vendor and Third Parties and any Third Party Intellectual Property. During the Transition Period, the applicable Governmental Entity agrees to pay Vendor any fees to which Vendor would be entitled under this Agreement for Deliverables performed or provided during such period; provided this Agreement was not terminated pursuant to Section 9.1 or 9.4, and Vendor continues to be in full compliance with all terms and conditions of this Agreement. In the event the Governmental Entity’s request for transition assistance does not require Vendor to continue providing all of the Deliverables under this Agreement or a particular Purchasing Instrument, the Parties shall negotiate in good faith an equitable adjustment in the fees which are otherwise payable to Vendor for such Deliverables.
- 9.8. Survival. Expiration or termination of this Agreement or a Purchasing Instrument for any reason will not release either Party from any liabilities or obligations set forth in this Agreement which:
- 9.8.1. The Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections:
- 9.8.1.1. 4 (Compensation and Additional Rights and Remedies);
- 9.8.1.2. 6 (Ownership and Intellectual Property);

- 9.8.1.3. 7 (Representations, Warranties, and Covenants);
  - 9.8.1.4. 8 (Indemnification);
  - 9.8.1.5. 9 (Term and Termination);
  - 9.8.1.6. 10 (Confidentiality);
  - 9.8.1.7. 11 (Security/Privacy, Business Continuity, and Disaster Recovery);  
and
  - 9.8.1.8. 12 (Contract Administration).
- 9.8.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

## 10. Confidentiality.

### 10.1. Vendor's Treatment of Confidential Information.

- 10.1.1. *Limited Access.* Customer Data shall at all times remain the property of the applicable Governmental Entity, and the applicable Governmental Entity shall retain exclusive rights thereto and ownership thereof. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Data to the extent necessary to carry out its duties under the Agreement. Vendor, Vendor Contractors, or Vendor Personnel shall hold any and all Customer Data in strictest confidence and will use and permit use of Customer Data solely for the purposes of providing Deliverables under this Agreement, subject to the restrictions set forth herein and all applicable state and federal laws, rules, regulations, standards, and orders applicable either during the term of this Agreement 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 Customer Data to any Third Party, except as expressly permitted hereunder or as Vendor may be expressly directed in advance in writing by the applicable Governmental Entity. Vendor, Vendor Contractors, and Vendor Personnel shall not remove from any Governmental Entity's facilities or retain a copy of any Customer Data unless such removal or retention is reasonably necessary to provide or perform Deliverables, to fulfill its obligations under this Agreement, or is otherwise approved in writing by the applicable Governmental Entity.
- 10.1.2. *Destruction or Return of Customer Data.* On the applicable Governmental Entity's written request or upon expiration or termination of this Agreement or applicable Purchasing Instrument for any reason, Vendor will promptly:
  - 10.1.2.1. After providing notice to the applicable Governmental Entity and subject to its prior written approval, return or destroy, at the applicable Governmental Entity's option, Customer Data; and
  - 10.1.2.2. Provide a notarized written statement to the applicable Governmental Entity certifying all Customer Data has been

returned or destroyed to the Governmental Entity, whichever is applicable.

To the extent Vendor is required to destroy Customer Data pursuant to this Section, Customer Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology (“NIST”)-approved methods.

10.1.3. *Compelled Disclosures.* To the extent required by applicable law or by lawful order or requirement of a court or governmental authority of competent jurisdiction over Vendor, Vendor may disclose Customer Data to a Third Party in accordance with such law, order, or requirement, subject to the following conditions:

- 10.1.3.1. As soon as becoming aware of such law, order, or requirement, and no-less-than five (5) business days prior to disclosing Customer Data pursuant thereto, Vendor will notify the applicable Governmental Entity in writing, specifying the nature of and circumstances surrounding the contemplated disclosure, and forward any applicable process, including a subpoena, to the appropriate Governmental Entity for its review.
- 10.1.3.2. Vendor will consult with the applicable Governmental Entity on the advisability of taking legally-available steps to resist or narrow any required response or disclosure.
- 10.1.3.3. Vendor will use best efforts not to release Customer Data pending the outcome of any measures taken by the applicable Governmental Entity to contest, oppose, or otherwise seek to limit such disclosure by Vendor or any Third Party ultimately obtaining such Customer Data. Vendor will cooperate with and provide assistance to the applicable Governmental Entity regarding such measures.
- 10.1.3.4. Soley the extent Vendor is required to disclose Customer Data to a Third Party, Vendor will furnish only such portion of Customer Data as it is required to disclose and will exercise best efforts to obtain an order or other reliable assurances that Customer Data will be held in confidence by any Third Party to which it is disclosed.

Notwithstanding any such compelled disclosure by Vendor, such compelled disclosure will not otherwise affect Vendor’s obligations hereunder with respect to Customer Data so disclosed.

## 10.2. Treatment of Vendor’s Confidential Information.

10.2.1. *Safeguarding Obligation.* Except as provided or contemplated herein, and subject to applicable state, federal, and/or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), Governmental



Entities shall not intentionally disclose Vendor's Confidential Information to a Third Party (excluding Governmental Entities and Authorized Contractors) without the prior written consent of Vendor.

- 10.2.2. *Destruction or Return of Vendor's Confidential Information.* On termination or expiration of this Agreement or applicable Purchasing Instrument, the applicable Governmental Entity shall, except to the extent otherwise required by applicable laws, rules, procedures, or applicable record retention 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 applicable Governmental Entity hereunder or that are required for use of any Deliverables).
- 10.2.3. *Compelled Disclosures.* Notwithstanding and in addition to the foregoing, Governmental Entities may disclose Vendor's Confidential Information:
- 10.2.3.1. 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;
  - 10.2.3.2. Pursuant to any applicable laws, rules, or regulations;
  - 10.2.3.3. If the applicable Governmental Entity determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
  - 10.2.3.4. If the applicable Governmental Entity determines Vendor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination 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, a Governmental Entity shall provide reasonable notice to Vendor of the circumstances giving rise to such disclosure.

- 10.3. Open Records and Electronic Discovery Requests and Record Retention. Vendor will, upon the applicable Governmental Entity's request and within any time period specified by the applicable 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 its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon the applicable 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 requirements.

- 10.4. 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, including any Governmental Entity, 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 will constitute a material breach of this Agreement and be grounds for immediate termination of the applicable Purchasing Instrument in the exclusive discretion of the non-breaching Party.
- 10.5. Ancillary Agreements and Non-Disclosure Agreements. Vendor will execute any agreements to address compliance and legal concerns that may be unique to an applicable Governmental Entity making purchases hereunder, such as a Business Associate Agreement or CJIS Security Addendum, or other non-disclosure or confidentiality agreements in connection with this Agreement or any related agreement deemed necessary by the applicable Governmental Entity (“**Ancillary Agreement(s)**”). Such Ancillary Agreements shall be attached as an Exhibit H hereto and incorporated by reference as if set forth herein.

## **11. Security/Privacy, Business Continuity, and Disaster Recovery.**

- 11.1. Data Protection. In addition to any other terms or conditions herein, and solely to the extent Vendor stores, processes, transmits, retains, or otherwise maintains Customer Data on a Governmental Entity’s behalf, Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:
- 11.1.1. Implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, or theft of Customer Property. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53 Revision 4 and ISO27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard its own Confidential Information of a like importance. Such securities measures, to the extent applicable, shall comply with, and shall enable the applicable Governmental Entity to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, ordinances, codes, regulations, and orders related to such security measures or other security, privacy, or safeguarding requirements.
- 11.1.2. 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, Vendor is responsible for encryption of Customer Data. 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 applicable Governmental Entity approves in writing the storage of Customer Data on a Vendor portable device that does not satisfy these standards.

- 11.1.3. 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 that are used and permanently stored or backed up at all times only in the continental United States of America.
- 11.1.4. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support. Vendor may not provide technical user support on a 24/7 basis using a Follow the Sun model.
- 11.2. Additional Hosting Terms. In addition to other terms herein (including Section 10 and all of this Section 11) that would be applicable to hosting, infrastructure, other “as a service” delivery models, or other similar services, and solely to the extent Vendor stores, retains, or otherwise maintains Customer Data on a Governmental Entity’s behalf, the following shall apply:
  - 11.2.1. *Import and Export of Data.* To the extent Customer Data is stored, retained, or otherwise maintained in electronic format in connection with any hosting, infrastructure, or other similar Services, the applicable 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 such services, at no charge, and in such formats as may be acceptable to the Governmental Entity, without interference from Vendor. In the event a Governmental Entity is unable to successfully import or export data and information in whole or in part, Vendor shall assist the Governmental Entity in doing so at no charge. As it relates to the export of such data and information, Vendor shall provide to or ensure the applicable Governmental Entity has obtained an export of any requested data or information within one (1) day of any request in the format specified by the Governmental Entity.
  - 11.2.2. *Retention of Customer Data.* Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor shall not take any action to intentionally erase any Customer Data until otherwise directed by the applicable Governmental Entity in accordance with Section 10.1.2.
  - 11.2.3. *Compliance/Audits.*
    - 11.2.3.1. *Compliance.* Annually throughout the term, Vendor shall obtain and provide OCIO, and any Governmental Entity upon request, at no additional cost:

- 11.2.3.1.1. An independent, Third-Party certificate of audit certifying that the Services/System complies with NIST 800-53, Revision 4 controls;
  - 11.2.3.1.2. An ISO/IEC 27001:2005 certification;
  - 11.2.3.1.3. Test or assessment results of an independent, Third-Party assessment of application scans using the Open Web Application Security Project (OWASP) Top Ten List;
  - 11.2.3.1.4. Test results of a penetration test conducted by an independent, Third-Party; and
  - 11.2.3.1.5. A copy of Vendor's annual SOC 2 type 2 report (for all Trust Services Principles); and
  - 11.2.3.1.6. A Vendor produced remediation plan resulting from items 11.2.3.1.1 through 11.2.3.1.5, inclusive.
- 11.2.3.2. Ongoing Security Testing. Vendor will periodically test its systems for potential areas where security could be breached. During the term, to the extent Vendor engages a Third Party auditor to perform an SSAE 16 of Vendor's operations, information security program, and/or disaster recovery/business continuity plan, Vendor shall promptly furnish a copy of the test report or audit report to OCIO. In addition, Vendor shall disclose its non-proprietary security processes and technical limitations to OCIO to enable OCIO to identify compensating controls necessary to adequately safeguard and protect Customer Data. For example, Vendor shall disclose its security processes with respect to virus checking and port sniffing to OCIO.
- 11.2.3.3. Security Audit by OCIO. During the term, OCIO or its Authorized Contractor(s) may perform security audits/scans of Vendor's environment, including unannounced penetration and security tests. Any Governmental Entity's regulators (and any federal agencies providing grant funds used to pay for such Deliverables, in whole or in part) shall have the same right upon request. Vendor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.
- 11.2.3.4. Access to Security Logs and Reports. Vendor shall provide security logs and reports to OCIO in a mutually agreeable format upon request. Such reports shall include at least latency statistics, user access summaries, user access IP address summaries, user access history and security logs for all State files related to the underlying agreement.

- 11.2.4. *Backup and Recovery.* Except as otherwise set forth in a Purchasing Instrument, 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, 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. To the extent applicable, any backups of Customer Data shall not be considered in calculating storage used by any Governmental Entity.
- 11.3. Personnel Safeguards.
- 11.3.1. *Background Checks.* Vendor shall conduct nationwide criminal background checks on Vendor Personnel and shall not utilize any such personnel in the performance of this Agreement who have been convicted of any crime of dishonesty, including criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty.
- 11.3.2. *Right to Remove Individuals.* Should a 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 applicable 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; any replacement furnished by Vendor in connection with such a request may not perform or provide Deliverables to the applicable Governmental Entity unless and until the applicable Governmental Entity gives its consent to Vendor’s use of such replacement. Vendor shall notify OCIO immediately upon receiving a Replacement Request from a Governmental Entity and promptly provide a copy of such Replacement Request to OCIO.
- 11.3.3. *Security Awareness Training.* Vendor shall promote and maintain an awareness of the importance of securing Customer Property among Vendor Personnel.
- 11.3.4. *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 to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Deliverables hereunder.

11.4. Security Breaches.

- 11.4.1. *Reporting.* Vendor will report to the applicable Governmental Entity and OCIO within two (2) hours of Vendor'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 applicable Governmental Entity and OCIO 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.
- 11.4.2. *Investigations in Response to Actual or Suspected Breach.* Vendor agrees, at its sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the applicable Governmental Entity and OCIO in resolving and mitigating any damage from such actual or suspected Security Breach at Vendor's sole cost. At no additional cost to the applicable Governmental Entity or the State of Iowa, Vendor will fully cooperate with the applicable Governmental Entity, OCIO, and the Authorized Contractors of either of the foregoing 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 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 will deliver to the applicable Governmental Entity and OCIO 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 applicable Governmental Entity specifically requests in writing Vendor do so.
- 11.4.3. *Additional Remedies in the Event of Actual Breach.* Upon the applicable Governmental Entity's determination that a Security Breach involving or relating to Customer Data has occurred, Vendor shall fully cooperate with the applicable Governmental Entity and OCIO in fully rectifying/responding to such Security Breach, including notifying all of the Governmental Entity's affected users. The applicable Governmental Entity shall determine, in its sole discretion, the content and means of delivery of any such notifications. Notwithstanding any provision in this Agreement or any other related agreement to the contrary, Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (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 or any other Governmental Entity) related to, arising out of, or incurred by or on behalf of any Governmental Entity as a result of, any Security Breach caused directly or indirectly, in whole or in part, by Vendor or Vendor Personnel, including the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); opening and closing accounts, printing new checks, embossing new cards; forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; 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 actions that are taken to mitigate or address the Security Breach. Vendor will reimburse or pay to the applicable 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.

11.5. Business Continuity/Disaster Recovery.

- 11.5.1. *Creation, Maintenance and Testing.* Vendor shall maintain a Business Continuity and Disaster Recovery Plan for all Services provided hereunder (“**Plan**”), and implement such plan in the event of any unplanned interruption of Services. On or before the effective date, Vendor shall provide OCIO and other applicable Governmental Entities 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 OCIO and other applicable Governmental Entities with copies of all reports and/or summaries resulting from any testing of the Plan and with copies of all such updates to the Plan. Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard Customer Data and the accessibility and availability of Services. Additional disaster recovery/business continuity requirements may be set forth in individual Purchasing Instruments.
- 11.5.2. Activation of Plan. Vendor shall immediately notify OCIO and other applicable Governmental Entities of any disaster or other event in which the Plan is activated. If Vendor fails to reinstate Services within the time periods set forth in the Plan, in addition to any other remedies available to OCIO or other Governmental Entities hereunder, OCIO may immediately terminate this Agreement and other applicable Governmental Entities may terminate a Purchasing Instrument as a non-curable default under Section 9.1. Without limiting Vendor’s obligations under this Agreement, whenever a disaster causes Vendor to allocate limited resources between or among Vendor’s customers, Governmental Entities procuring Deliverables hereunder shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 12.25 (Force

Majeure) shall not limit Vendor's obligations under this Section. Further, nothing in this Section shall be construed as in any way limiting Vendor's obligations elsewhere in this Agreement or any rights or remedies available to any Governmental Entity.

## 12. General Provisions.

- 12.1. No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor shall not make any media release or other public announcement relating to or referring to this Agreement or a Purchasing Instrument without OCIO's or the applicable Governmental Entity's prior written consent. Vendor shall acquire no right to use, and shall not use, without OCIO's or the applicable Governmental Entity's written consent, the terms or existence of this Agreement or any Purchasing Instrument, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the State of Iowa or any Governmental Entity, 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 Deliverables by the State of Iowa or any Governmental Entity; or (c) in any manner other than expressly in accordance with this Agreement.
- 12.2. Independent Contractor. Vendor is an independent contractor performing services for Governmental Entities. Vendor shall not hold itself out as an employee or agent of the any Governmental Entities. Governmental Entities procuring Deliverables hereunder shall not provide Vendor Personnel with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Vendor Personnel are not eligible for any State employee benefits, including retirement benefits, insurance coverage or the like. Vendor Personnel shall not be considered employees of any Governmental Entity for any purpose, including for federal or State tax purposes. Governmental Entities shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.
- 12.3. Amendments.
- 12.3.1. *Agreement*. This Agreement may be amended, modified, or replaced from time to time by mutual consent of the Parties. Both Parties must execute all amendments to this Agreement in writing.
- 12.3.2. *Purchasing Instrument/Ancillary Agreement(s)*. A Purchasing Instrument or Ancillary Agreement may be amended, modified, or replaced from time to time by the applicable Governmental Entity and Vendor by mutual consent of the Parties. Both Parties must execute all amendments to a Purchasing Instrument or Ancillary Agreement in writing.
- 12.4. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the OCIO, Vendor, other Governmental Entities making purchases hereunder, and their respective successors and permitted assigns.



- 12.5. Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to any Governmental Entity, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's designated agent. Vendor appoints [REDACTED] as its agent to receive service of process. If for any reason Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide OCIO and any Governmental Entities making purchases hereunder with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by OCIO and the applicable Governmental Entity. Nothing in this provision will alter the right of OCIO or any other Governmental Entity to serve process in any other manner permitted by law. This Section shall survive termination of this Agreement.
- 12.6. 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 OCIO may assign, transfer, or convey this Agreement, in whole or in part, to any Governmental Entity that succeeds OCIO's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by OCIO to which the Deliverables relate. Likewise, individual Purchasing Instruments may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other Party, except that the applicable Governmental Entity may assign, transfer, or convey a Purchasing Instrument, in whole or in part, to any Governmental Entity that succeeds the applicable Governmental Entity's duties thereunder or otherwise assumes responsibility for functions or duties currently assumed by that Governmental Entity to which the Deliverables relate. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide OCIO and any Governmental Entities making purchases hereunder 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 OCIO or the applicable 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.

- 12.7. Use of Third Parties. None of the Deliverables to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party, including Vendor Contractors, without the prior written consent of the applicable Governmental Entity. Such consent shall not be deemed in any way to provide for the incurrence of any additional obligation of a Governmental Entity, whether financial or otherwise. Any subcontract to which a Governmental Entity has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the applicable Governmental Entity may deem necessary. Vendor is solely liable for any and all payments that may be due to Vendor Contractors pursuant to any subcontract. Vendor shall indemnify and hold harmless the State, OCIO, and any Governmental Entity and their officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, 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 into which it enters, including Vendor's failure to pay any and all amounts due to any Vendor Contractor. In addition, the State, OCIO, and any Governmental Entity is not responsible for any failure of any Vendor Contractors to pay any amounts that may be due Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with Deliverables provided under this Agreement, the applicable Governmental Entity may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in the manner authorized in this paragraph shall not relieve Vendor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow Governmental Entities making purchases hereunder to access the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Vendor Contractors. Any action of a Vendor Contractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect. The term "**Vendor**" as used in this Agreement shall, unless the context clearly requires to the contrary, be deemed to include Vendor Contractors and Vendor Personnel.
- 12.8. 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. *See* Section 1.4 for the relationship between this Agreement and individual Purchasing Instruments executed between Vendor and Governmental Entities other than OCIO. In addition, no Governmental Entity shall be bound by any "shrink-wrap" agreement, "click-wrap"

agreement, “browser-wrap” agreement, or “sneakwrap” agreement, or any other similar agreement that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against any Governmental Entity on the basis of draftsmanship or preparation thereof.

- 12.9. Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the State of Iowa and Vendor for the goods, services, and other Deliverables provided in connection with this Agreement.
- 12.10. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the applicable Governmental Entity and Vendor, failure by a 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.
- 12.11. Notices. Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice (identified below) at the address of the Party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

**If to the State:**

**Attn:** Business Services Division Administrator

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Iowa Office of the Chief Information Officer

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Hoover State Office Building, Level B

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Des Moines, IA 50319

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**If to Vendor:**

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**If to another Governmental Entity:** the individual/address specified in the applicable Purchasing Instrument.

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

- 12.12. **Cumulative Rights.** The various rights, powers, options, elections, and remedies of OCIO, the State, and Governmental Entities 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 OCIO, the State, and Governmental Entities to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by OCIO, the State, or any Governmental Entity of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 12.13. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- 12.14. **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 Contractors and Vendor Personnel providing Deliverables hereunder are responsive to the applicable Governmental Entity's requirements and requests in all respects.
- 12.15. **Authorization.** Vendor represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Vendor, enforceable in accordance with its terms.
- 12.16. **Successors in Interest.** All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, and legal representatives.
- 12.17. **Records Retention and Access.** Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, the auditor of any Governmental Entity making purchases hereunder or any authorized representative thereof, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine,

audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require Vendor Contractors to agree to the same provisions of this section.

- 12.18. Headings or Captions and Terms. The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 12.19. Multiple Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- 12.20. Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.
- 12.21. Attachments/Order of Priority. 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.
- 12.22. Further Assurances and Corrective Instruments. The Parties agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.
- 12.23. Obligations of Joint Entities. If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.
- 12.24. 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 ability to deliver the Deliverables contemplated by this Agreement; strikes; labor unrest; or supply chain disruptions. 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 adversely affected. 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.

- 12.25. Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.
- 12.26. Right of Inspection/Contract Compliance. Vendor shall allow OCIO, a Governmental Entity making purchases hereunder, or a designee of either of the foregoing to inspect Vendors books and records at reasonable times in order to monitor and evaluate performance of this Agreement. All subcontracts shall contain provisions which allowing the same. In addition, Vendor agrees that OCIO 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 any related Purchasing Instruments. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by OCIO or its designee. Vendor shall not impose any charge or fee in connection with any contract compliance audit.
- 12.27. Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. OCIO and the State are exempt from the payment of State sales and other taxes: [https://das.iowa.gov/sites/default/files/acct\\_sae/man\\_for\\_ref/forms/sales\\_tax\\_exempt\\_letter.pdf](https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf). Other Governmental Entities may be exempt from the payment of State sales and other taxes as well.
- 12.28. Title to Property. Title to all property, including Customer Property, furnished by a Governmental Entity to Vendor to facilitate the performance of this Agreement shall remain the sole property of that 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 applicable Governmental Entity upon the earliest of completion, termination, cancellation of this Agreement or the applicable Purchasing Instrument, or

at the applicable 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 purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by a Governmental Entity under this Agreement, shall pass to and vest in that Governmental Entity, except as otherwise provided in this Agreement.

- 12.29. Exclusivity. This Agreement is not exclusive. During the term of this Agreement, any Governmental Entity making purchases hereunder may obtain similar or identical Deliverables from other vendors.
- 12.30. Award of Related Agreements. Governmental Entities making purchases hereunder 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 a Governmental Entity in connection with this Agreement. Any reference herein to a 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.
- 12.31. Sovereign Immunity. No Governmental Entity waives sovereign immunity or any other immunity available to it by entering into this Agreement and specifically retains and reserves the defense of sovereign immunity and all defenses available under State and federal laws, rules, and regulations for any claims arising out of or related to this Agreement.
- 12.32. Assignment of Third Party Warranties. At a Governmental Entity's request, Vendor will assign to that Governmental Entity any and all existing and future warranties, indemnities, and other benefits obtained or available from the licensor of any Third Party Software or the manufacturer of any Third Party Equipment provided or otherwise furnished by Vendor, directly or indirectly, in connection with this Agreement.
- 12.33. Attorney's Fees and Expenses. In the event Vendor defaults on any of its obligations under this Agreement, Vendor shall pay to the applicable 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 applicable Governmental Entity in enforcing this Agreement or any of its rights and remedies with respect thereto.
- 12.34. Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property, including Customer Property, furnished by a 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 applicable 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 applicable Governmental Entity. In addition, at the applicable 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 any Governmental Entity, including OCIO or the State. Vendor shall obtain the prior advance written approval from the Governmental Entity prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks, or intellectual property rights of any Governmental Entity.

- 12.35. Notification of Events. Vendor shall notify OCIO and any applicable Governmental Entity in writing if any of the events set forth in Section 9.1 occur that would authorize OCIO or the Governmental Entity to immediately terminate this Agreement or applicable Purchasing Instrument.



**Attachment A**  
Goods and Services Schedule

## Attachment B

### Special Terms and Conditions Applicable to Software/Maintenance and Support

These Special Terms and Conditions are part of and incorporated into the State of Iowa Endpoint Managed Services Agreement (“**Agreement**”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**OCIO**”), and **XXXXXX**, a corporation organized under the laws of \_\_\_\_\_ (“**Vendor**”), dated \_\_\_\_\_, 2018.

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

- 1.1. **“End User License Agreement(s)” or “EULA(s)”** means any license agreement or other commercial agreement, regardless of how designated, in any way related to the right to use any Software or related maintenance and support Services purchased under the Agreement, including any agreement proposed prior to or after execution of the Agreement, and including any agreement that is affixed to (e.g., shrinkwrap), embedded in (e.g., clickwrap/sneakwrap/browserwrap), or otherwise related to any such Software or related maintenance and support Services.
- 1.2. **“Warranty Period”** means, unless otherwise specified in a Purchasing Instrument or as extended pursuant to a separate maintenance or support package, the one year period commencing the date the applicable Governmental Entity provides Vendor written notice of Final Acceptance for the Software or any related System into which the Software is incorporated, whichever occurs later.

**2. Scope of these Special Terms and Conditions/Relationship between these Special Terms and Conditions and EULAs.**

- 2.1. Agreement to Authorized EULAs. Subject to the provisions of these Special Terms and Conditions, Governmental Entities purchasing Software or related maintenance and support Services under the Agreement agree to the terms and conditions of any applicable EULA solely to the extent such terms and conditions relate to the use and licensing of Software or any related maintenance and support Services. All other terms and conditions in any EULA are void.
- 2.2. Order of Precedence. To the extent of any conflict or inconsistency between these Special Terms and Conditions and any EULA, these Special Terms and Conditions shall supersede.
- 2.3. Relationship between these Special Terms and Conditions/Agreement and EULA(s)/Software Licenses. Each EULA/software license agreed to hereunder, and subject to these Special Terms and Conditions, shall be deemed, upon its execution, to incorporate these Special Terms and Conditions and, to the extent applicable, the 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 OCIO purchases Software hereunder pursuant to a Purchasing Instrument executed by it, such Governmental Entity shall be solely responsible for any payments due and duties and obligations owed Vendor related thereto. In addition, notwithstanding any

other provision of these Special Terms and Conditions or the Agreement to the contrary, OCIO bears no obligation or liability for any other Governmental Entity's losses, liabilities, or obligations. 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 related hereto.

### **3. Grant of License.**

4. Default Grant of License. Unless otherwise provided in a EULA or Purchasing Instrument, with respect to any Software purchased pursuant to the Agreement, Vendor grants to the applicable Governmental Entity a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license.
5. Supplemental Grant of License. With respect to any license granted pursuant to these Special Terms or Conditions or a EULA, such grant of license shall be deemed to include the following grant of rights to the applicable Governmental Entity:
  - 5.1. Use, install, host, access, execute, copy, modify, edit, format, translate, maintain, support, repair, enhance, test, demonstrate, and display the Software, and prepare derivative works based on the Software, in all media now known or hereafter created, including the right to host or install the Software on any one or more of the computers, data center locations, networks, Internet or intranet sites, servers or other systems of the applicable Governmental Entity or any of its Authorized Contractors ("**Licensee Systems**").
  - 5.2. Combine and use the Software with other software, firmware, other code, including public code, and hardware;
  - 5.3. The same grant of right rights granted to the applicable Governmental entity to its Authorized Contractors; and
  - 5.4. The right to permit access to and use of the Software and its functions by end users.

The foregoing license grants and rights conferred herein include a license under any current or future patents owned or licensable by a Governmental Entity to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Software with any other Deliverables or any other hardware or software. For purposes of this Agreement, if a Governmental Entity makes any modifications or Enhancements to the Software (whether directly or indirectly through an Authorized Contractor), the Governmental Entity shall own such modifications or Enhancements.

- 5.5. Governmental Entities Not Required to Accept or Install Enhancements. Vendor shall not condition any Governmental Entity's rights and remedies, or Vendor's obligations, under this Agreement or any other agreement related to the Software or related maintenance or support Services, on Licensee accepting or installing any Enhancements or additional functionality provided by Vendor.

**6. Delivery of Source Code.** Vendor shall furnish and deliver to the applicable Governmental Entity a complete copy of all Source Code (on a media and in an electronic format acceptable to the Governmental Entity) and updated Documentation (including any written information necessary or desirable for the maintenance, modification, compilation, and/or Enhancement of the Software):

- 6.1. Upon the Governmental Entity providing Vendor the Governmental Entity's written notice of Acceptance with respect to the Software;
- 6.2. Whenever Vendor delivers, provides, or makes available any Enhancements; or
- 6.3. Within five (5) business days of receiving any written notice from a Governmental Entity requesting such Source Code and Documentation.

In addition to any rights and privileges granted pursuant to the Agreement, all of the rights and privileges granted under these Special Terms and Conditions with respect to the Software shall apply to the Source Code and Documentation.

**7. Delivery and Installation.** Except as otherwise set forth in a Purchasing Instrument, Vendor shall deliver Software to the applicable Governmental Entity and setup and install the Software for use on Licensee Systems specified by the applicable Governmental Entity at no charge. To the extent any Software or related Documentation is mailed or shipped, Vendor 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.

**8. Warranties.**

- 8.1. Software Free of Deficiencies. Vendor represents and warrants that during the Warranty Period, the Software shall: (i) be free from material Deficiencies; (ii) conform to and operate in accordance with all Specifications; and (iii) be compatible with and interoperate fully and correctly with Licensee Systems specified in any Purchasing Instrument. During the Warranty Period, Vendor shall, at Vendor's request and at Vendor's expense, repair, correct or replace any Software that fails to comply with the warranties and requirements of this Section promptly upon receiving notice of such failure from a Governmental Entity. In the event Vendor is unable to repair, correct or replace such Software to the applicable Governmental Entity's satisfaction, Vendor shall refund the fees or other amounts paid for such Software within ten (10) business days after a Governmental Entity's request for such refund. The foregoing shall not constitute an exclusive remedy under this Agreement, and a Governmental Entity shall be entitled to pursue any other available contractual, legal or equitable remedies.
- 8.2. Fitness for Intended Purpose. Vendor represents and warrants that Vendor is fully aware of the applicable Governmental Entity's business requirements and intended uses for the Software and the Software shall satisfy such requirements in all material respects and is fit for such intended uses.
- 8.3. Quiet Enjoyment. Vendor represents and warrants that: (i) it is the owner of the Software and any and all intellectual property rights in and to such Software, including copyrights, trademarks, trade secrets, trade dress, and/or patent rights; (ii) it owns, possesses, holds, and has received all rights, permits, permissions, licenses and authority necessary to provide all Software to Governmental Entities hereunder and to grant and convey the benefits, licenses, and other rights granted or conveyed to Governmental Entities hereunder without violating any rights of any Third Party; (iii) except for Third Party Software provided hereunder, the Software shall be wholly original with and prepared solely by Vendor; (iv) Vendor has not previously and will not grant any rights in the Software to any Third Party that are inconsistent with the rights granted herein; and (v)

Vendor shall peacefully and quietly have, hold, possess, use, and enjoy all Software without suit, disruption or interruption.

- 8.4. Intellectual Property. Vendor represents and warrants that: (i) the Software (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, the Software); (ii) any Governmental Entities' use of the Software in accordance with the terms of this Agreement; and any Governmental Entities' exercise of the rights, licenses, and benefits granted or conveyed hereunder, do not and will not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation, or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret related to the Software. Vendor shall immediately inform a Governmental Entity in writing upon becoming aware of any actual, potential or threatened claim of infringement or violation of any intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. If such a claim arises or is likely to arise, Vendor shall, at a Governmental Entity's request: (i) procure for the applicable Governmental Entity the right or license to continue to use the Software at issue; (ii) replace such Software with functionally equivalent or superior Software free of any such infringement, violation, or misappropriation; (iii) modify or replace the affected portion of the Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation; or (iv) accept the return of the Software at issue and refund to the applicable Governmental Entity all fees, charges and any other amounts paid by the applicable Governmental Entity under this Agreement or any related agreement with respect to such Software. 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. The foregoing shall not constitute an exclusive remedy under this Agreement, and a Governmental Entity shall be entitled to pursue any other available contractual, legal or equitable remedies.
- 8.5. No Backdoors. Vendor represents and warrants that all Software provided hereunder does not and shall not as delivered or provided contain any anti-use device, disabling device, lockup program, ransomware, so-called "time bomb" or "drop dead" device, "back door," instructions, contaminants, viruses, Trojan Horses, worms, cancelbots, or any other mechanism, code or computer programming routine that will disable, damage, impair or impede, lock-up, alter, halt, abnormally end, surreptitiously intercept, expropriate or interfere with the Software, Licensee Systems or any data or information of a Governmental Entity. Vendor further represents and warrants that all Software does not contain any other programming or device of any kind that would allow unauthorized access to the Software by Vendor or any other person or any Third Party, except as otherwise permitted for purposes of providing Services under the Agreement or as otherwise authorized by the applicable Governmental Entity in writing. Vendor covenants that it will not under any circumstance, including enforcement

of a valid contract right, (i) install or trigger a lockup program or disabling device, or (ii) take any step that would in any manner interfere with any Governmental Entity's use of the Software or Licensee Systems, or restrict a Governmental Entity from accessing its data files or in any way interfere with the transaction of a Governmental Entity's business. For any breach of this provision, a Governmental Entity shall, immediately after receipt of notification of the breach, cure the breach to a Governmental Entity's satisfaction, including repairing, at Vendor's expense, any damage done to the Software or Licensee Systems or any other property.

- 8.6. Compliance with Law. Vendor represents and warrants that the Software and the license, use, and other rights granted hereunder comply with, and shall comply with, all applicable federal, state, local and international laws, rules, regulations, codes, standards, orders, and ordinances in effect as of the date of purchase, including 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 applicable information technology standards, procedures, protocols, and other requirements, including applicable standards and requirements established by OCIO, available at <https://ocio.iowa.gov/standards>.
- 8.7. Documentation. Vendor represents and warrants that all Documentation will accurately reflect the operation of the Software to which the Documentation pertains and will enable the Licensee to use, modify, and maintain the Software fully and completely.
- 8.8. Cumulative Warranties. Vendor's warranties provided in this Section are in addition to and not in lieu of any other warranties provided in these Special Terms and Conditions and the Agreement. All warranties provided for in these Special Terms and Conditions and the 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 Governmental Entities.

## 9. **Term and Termination.**

- 9.1.1. Term. With regard to any license or grant of rights related to any Software, including any related Documentation and Source Code, the term of any license shall begin on the date of execution of the corresponding Purchasing Instrument and, in addition to any terms or conditions specifically identified as surviving termination or expiration of the Agreement or which by their very nature would be deemed by the Parties to survive termination or expiration:
- 9.1.1.1. In the case of a perpetual license, the the terms and conditions of the Agreement, including these Special Terms and Conditions, shall continue to apply to that license indefinitely, notwithstanding the expiration of the Agreement;
- 9.1.1.2. In the case of a term or subscription-type license, the terms and conditions of the Agreement, including these Special Terms and

Conditions, shall apply during the applicable license, term notwithstanding the expiration of the Agreement.

- 9.1.2. Termination. Vendor or an applicable Governmental Entity may terminate a EULA/software license in accordance with Section 9 (Default and Termination).

**10. General Terms and Conditions.** In addition to the terms and conditions set forth in these Special Terms and Conditions, the general terms and conditions of the Agreement shall apply to any grant of license hereunder, including but not limited to:

- 10.1.1. 4 (Compensation and Additional Rights and Remedies);
- 10.1.2. 5 (Acceptance Tests, Project Management, and Contract Administration);
- 10.1.3. 8 (Indemnification);
- 10.1.4. 9 (Default and Termination);
- 10.1.5. 10 (Confidentiality);
- 10.1.6. 11 (Security/Privacy, Business Continuity, and Disaster Recovery);
- 10.1.7. 12 (General Provisions).

**Attachment C**

Special Terms and Conditions Applicable to Virtual Desktop Support Services



**Attachment D**  
Special Terms and Conditions Applicable to Professional Services

**Attachment(s) E**  
Purchase Order(s)/Statement(s) of Work

**SAMPLE STATEMENT OF WORK**

This Statement of Work (“SOW”), effective as of the date of last signature below (“SOW Effective Date”), is between the Governmental Entity serving as signatory hereto and **XXXXXX**, a corporation organized under the laws of \_\_\_\_\_ (“Vendor”). This SOW incorporates the State of Iowa and Endpoint Managed Services Agreement (“Agreement”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“OCIO”), and Vendor, dated **XXXXXX**, 2018. Capitalized terms not defined in this Statement of Work are as defined in the Agreement. The applicable Governmental Entity and Vendor may be referred to herein individually as a “Party” or collectively as the “Parties.”

1. **Contacts.** The following shall be the Parties’ primary contacts for this SOW and, unless otherwise set forth herein, the Project Manager(s):

Vendor Representative: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Fax number: \_\_\_\_\_  
Email address: \_\_\_\_\_

Representative of applicable  
Governmental Entity: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Fax number: \_\_\_\_\_  
Email address: \_\_\_\_\_

2. **Description of Deliverables/System.** Vendor shall provide Generally describe Deliverables/System to be provided by Vendor.

2.1 Software. The System shall be comprised of the following Software: List all Software, including Third Party Software, to be procured through Vendor in connection with any System described herein.

2.2 Documentation. Vendor shall provide all Documentation required for the Governmental Entity and its personnel to make use of the System and the Deliverables, including but not limited to: List any specific Documentation needed to utilize any System/Deliverables.

2.3 Source Code. Vendor shall deliver all Source Code for the following Deliverables or Software: List any Source Code the receipt of which is expected.

- 2.4 Extended Warranty Period. [The default Warranty Period for any Deliverables or Software purchased under the Agreement is one (1) year. Please identify and document any extended Warranty Period here].
3. **Compensation.**
- 3.1 Per-Deliverables Prices. [List per-Deliverable prices consistent with the prices set forth in Attachment A].
4. **Delivery Timeframes.** [Specify applicable delivery timeframes in accordance with Section 4.3 of the Agreement].
5. **Performance Standards and/or Acceptance Testing.** [Establish Vendor-accountability measures/Acceptance Criteria as required by Section 4.4 of the Agreement. For example, consider utilizing the Retained Amounts option by identifying an amount of up to fifteen (15%) to be retained with respect to all Deliverables provided under this and/or related SOW(s) as permitted by Section 5.6 of the Agreement]. **[EXAMPLE ONLY:]**
- 5.1 Vendor completes implementation according to timeline outlined above and shall be liable to the Governmental Entity in the following amount for failing to fulfill this requirement:
- Amount at risk – 5% of total fee under this SOW.
6. **Reimbursable Expenses.** [To the extent set forth in a Purchasing Instrument, Vendor may be entitled to reimbursement for travel expenses in accordance with section 5.8 of the Agreement].
7. **Governmental Entity Responsibilities.** **[EXAMPLES ONLY:]**
- 7.1 The Governmental Entity shall commit staff and resources necessary for successful execution of the Agreement.
- 7.2 The Governmental Entity shall make IT staff and resources available to discuss and provide the necessary data fields required for the Deliverables or System under the Agreement, to perform testing, and to define delivery protocols for data feeds.
- 7.3 The Governmental Entity shall determine, define, and execute communication and reporting protocols related to the Agreement.
- 7.4 The Governmental Entity shall identify applicable training requirements.
8. **Key Personnel.** As part of the consideration for this Agreement, Governmental Entity is relying upon the personal skills of the following key individuals (“**Key Personnel**”). Except in the event of disability, illness, grave personal circumstances, or separation from service, Vendor must receive the Governmental Entity’s written approval prior to making any substitutions of such Key Personnel to the extent of their involvement with this SOW. [List any key personnel:].

**IN WITNESS WHEREOF**, the Parties have caused their respective duly authorized representatives to execute this Statement of Work, which is effective as of the SOW Effective Date.

**[Name]**  
**(“Governmental Entity”)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Name]**  
**(“Vendor”)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Attachment F**  
Insurance

1. Insurance Requirements. Vendor shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa, insurance covering its work of the type and in amounts required by this Exhibit. Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor's performance of the Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Exhibit shall: (a) remain in full force and effect for the entire Term of the Agreement; and (b) not be reduced, changed (to the detriment of the State of Iowa or any Governmental Entities), or canceled (without being simultaneously replaced by another policy meeting the requirements of this Exhibit). The State of Iowa shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: "It is hereby agreed and understood that the State of Iowa is named as additional insured, and that the coverage afforded to the State of Iowa under this policy shall be primary insurance. If the State of Iowa has other insurance that is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance." Notwithstanding the foregoing, the requirement that the State of Iowa be named as additional insureds on all policies of insurance shall not apply to Vendor's Workers Compensation Insurance. The State of Iowa will accept a combined Technology Errors and Omissions and Cyber Liability policy or a separate Technology errors and Omissions and separate Cyber Liability policy. Such insurance shall, (a) cover the liability of Vendor by reason of any actual or alleged error, omission, negligent act or wrongful act of Vendor committed in rendering or failing to render any products or services, and shall specifically include coverage for liabilities caused by a security breach, breach of privacy or a breach of privacy regulations, including unauthorized disclosure of information, unauthorized access, or failure to protect a network security breach; liabilities resulting from the unauthorized release, transmission or publication of private or technical information in your possession under the scope of the Agreement; (b) including the indemnification of the State of Iowa for any costs and expenses, including the State of Iowa's notification expenses, incurred by the State of Iowa arising out of a security breach, privacy breach or breach of privacy regulations; with an occurrence or per claim limit and annual aggregate limit of not less than \$15,000,000 each claim/\$15,000,000 annual aggregate; and (c) if underwritten on a claims made insuring agreement, be maintained for a period of not less than two (2) years after the expiration of the Agreement. In the event Vendor fails to secure and continuously maintain the insurance coverage required under this Exhibit, the State of Iowa may charge Vendor, and Vendor shall pay the State of Iowa, (a) the State of Iowa's actual expenses incurred in purchasing similar protection and (b) the value or amount of any claims, actions, damages, liabilities, costs, and expenses paid by the State of Iowa which would not have been paid by the State of Iowa if Vendor had complied with the requirements of this Exhibit.
  
2. Insurance Policies. Unless otherwise requested by the State of Iowa, Vendor shall cause to be issued insurance policies with the coverages set forth below:

<u>Type of Insurance</u>	<u>Limit</u>	<u>Amount</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$15 million
	Products –	
	Comp/Op Aggregate	\$15 million
	Personal injury	\$15 million
Automobile Liability (including contractual liability) written on an occurrence basis	Each Occurrence	\$5 million
	Combined Single Limit	\$1 million
Excess Liability, umbrella form	Each Occurrence	\$5 million
	Aggregate	\$15 million
Technology Errors and Omissions Insurance	Each Occurrence	\$5 million
	Aggregate	\$15 million
Workers Compensation and Employer Liability	As Required by Iowa law	\$2 million
Cyber Liability / Network Security	Each Occurrence	\$15 million
	Aggregate	\$15 million

3. Claims Provision. All insurance policies required by this Exhibit, with the exception of the policy for Errors and Omissions Insurance, must provide coverage on an “occurrence basis” for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy. The policy for Errors and Omissions Insurance will provide coverage on a “claims made” basis, provided however, that such policy includes extended reporting period or tail coverage acceptable to the State of Iowa.
4. Certificates of Coverage. At the time of execution of the Agreement, Vendor shall deliver to the State of Iowa certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to the Agreement, certifying that the State of Iowa is named as an additional insured on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the State of Iowa. All certificates of insurance shall be subject to approval by the State of Iowa. The Vendor shall simultaneously with the delivery of the certificates deliver to the State of Iowa one duplicate original of each insurance policy.
5. Liability of Vendor. Acceptance of the insurance certificates by the State of Iowa shall not act to relieve Vendor of any obligation under this Agreement. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Vendor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Vendor shall have no claim or other recourse against the State of Iowa for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Vendor. Notwithstanding any other provision of the Agreement, Vendor shall be fully responsible and liable for meeting and fulfilling all of its obligations under this Exhibit and Section 17 (Insurance) of the Agreement.

6. Waiver of Subrogation Rights. Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State of Iowa. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State of Iowa for all policies except for the policy for the Errors and Omissions Insurance.
7. Filing of Claims. In the event the State of Iowa suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Vendor shall, at the State of Iowa's request, immediately file a proper claim under such policy. Vendor will provide the State of Iowa with proof of filing of any such claim and keep the State of Iowa fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the State of Iowa. Vendor shall pay to the State of Iowa any insurance proceeds or payments it receives in connection with any such claim immediately upon Vendor's receipt of such proceeds or payments.
8. Proceeds. In the event the State of Iowa suffers a loss that may be covered under any of the insurance policies required under this Exhibit and Section 17 (Insurance) of the Agreement, neither the Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the State of Iowa has fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the State of Iowa all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Exhibit and the Agreement.

**Attachment G**  
Special Terms and Conditions--Ancillary Agreements



**Attachment H**

Special Terms and Conditions Applicable to Vendor's Service Level Agreement ("SLA")