

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

Master Agreement #: AR3710
Contractor: **KYNDRYL, INC.**
Participating Entity: **STATE OF IOWA**

The following products or services are included in this contract portfolio: **IaaS**

Master Agreement Terms and Conditions:

1. Scope

This addendum covers **Cloud Solutions** led by the State of *Utah* ("**Lead Agency**") for use by state agencies and other entities located in the Participating State of Iowa authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

2. Participation

This NASPO ValuePoint Master Agreement may be used by all state agencies, political subdivisions and other entities authorized to use statewide contracts in the State of Iowa. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Within the State of Iowa, all state agencies, state facilities, cities, counties, education entities or any entity funded in part with state tax dollars, are eligible purchasers and authorized to purchase Products and Services under the terms of this Participating Addendum in lieu of a separate competitive selection process (Exception: State of Iowa executive branch agencies must purchase according to applicable system standards and seek approval from the State of Iowa - Office of the Chief Information Officer - OCIO when required as directed by administrative code before purchasing from this contract).

3. Order of Precedence

1. The State of Iowa Participating Addendum ("PA")
2. The Lead Agency's Master Agreement (includes negotiated Terms & Conditions)
3. The Lead Agency's Solicitation including all Addendums
4. Contract Vendor's response to the Lead Agency's Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently

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provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Terms

The Agency is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

5. Primary Contacts

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor - Kyndryl, Inc.

Name:	Richard Cassell
Address:	One Vanderbilt Ave. 15 th Floor, New York, NY 10017
Telephone:	(206) 485-8700
Email:	Richard.Cassell@kyndryl.com

Participating Entity – State of Iowa

Name:	Laura Shannon
Address:	1305 E. Walnut St.
Telephone:	515-330-7325
Email:	laura.shannon@iowa.gov

6. Participating Entity Modifications Or Additions To The Master Agreement

These modifications or additions apply only to actions and relationships within the Participating Entity. Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

6.1 Modifications or Additions to the Contract

6.1.1 Reports

The Contractor shall submit quarterly reports to the State of Iowa Contract Administrator: Laura Shannon, showing all sales made quarterly against this Participating Addendum within the State of Iowa. Such reports will show the quantities and dollar volume of purchases by each Purchaser - email:

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laura.shannon@iowa.gov

- Purchaser Name (e.g., Iowa Department of Human Services)
- Purchaser entity identification (e.g., State agency or political subdivision – see Section 2)
- Purchaser City
- NASPO # AR3710
- State of Iowa MA#22355
- Item Purchased Description
- Item Purchased Price
- Date Purchase was invoiced/sale was recognized as revenue by Vendor
- State of Iowa Administrative Fee Applied

6.1.2 Pricing

The Contractor's stated prices on the NASPO ValuePoint website shall be discounted using the discounts and price lists approved and agreed to with the Contractor's Pricing List. The stated discounts are considered to be the minimum discount offered. The Contractor may offer, within written quotes, a higher discount than the approved minimum discount for volume purchases or for competitive reasons. Minimum discounts listed in the price list must be held firm for the duration of the Contract's term. Agencies shall be allowed to negotiate further discounting for large volume purchases. Notwithstanding the foregoing, or anything else in this Participating Addendum to the contrary, in accordance with Section 27 of the Master Services Agreement, Contractor may adjust its stated prices on the NASPO ValuePoint to account for the administrative fee contemplated by Section 6.1.4 below.

6.1.3 Invoicing

For the duration of the contract, all product pricing shown on invoices submitted to the State shall:

- Not fall short of the discounts quoted on the Pricing List.
- Items covered under this contract are FOB Destination and shipping charges are not to be included on any invoice unless the Agency has ordered expedited shipment. For expedited shipment, Agency would submit their order including related shipping charges, which may not exceed the cost of delivery by the carrier.
- Be verifiable against the manufacturer's then-current retail price list.

6.1.4 Administrative Fee

Without affecting the approved Product or Service prices or discounts specified in the Contract and this Participating Addendum, the State of Iowa shall be entitled to receive one percent (1.00%) administrative fee on all sales made within the State of Iowa against

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this agreement. The administration fee due to the State of Iowa shall be paid quarterly by the Contractor directly to the Participating State, made payable to the "Iowa Department of Administrative Services".

Send to:

State of Iowa – DAS/Central Services Enterprise
Attention: DAS – CSE COO 1305 E. Walnut St.
Des Moines, IA 50319

6.1.5 Payment Terms

Payment Terms shall be Net 60 days. Per Iowa Code § 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a Contractor. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

6.1.6 Terms and Conditions

The terms and conditions found in Attachment 1 shall govern this Participating Addendum.

7. Compliance with the Law; Nondiscrimination in Employment

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers.

Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies required under Iowa Administrative Code chapter 11—121. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract. In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section. Notwithstanding anything in this Contract to the contrary, the Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare the Contractor ineligible

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for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

8. Subcontractors

All contractors, dealers, and resellers authorized in the State of Iowa, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

9. Orders

Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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

State of Iowa – DAS - CSE	Kyndryl, Inc.
Signature: 	Signature:  Richard Cassell (Sep 8, 2022 15:43 EDT)
Name: Laura Shannon	Name: Richard Cassell
Title: Purchasing Agent 3	Title: Client Services Executive
Date: 09/08/2022	Date: 09/08/2022

[Additional signatures may be added if required by the Participating Entity]

Attachment 1

Additional Information Technology Terms and Conditions

1. **Definitions.** Capitalized terms not defined herein are as defined in the General Terms. The following capitalized terms shall have the following meanings:
 - 1.1. **“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 any Deliverables provided pursuant to any General Terms.
 - 1.2. **“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.
 - 1.3. **“Customer Data”** means all information, data, materials, or documents (including Confidential Information of or belonging to any applicable Governmental Entity) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from a Governmental Entity making purchases pursuant to any General Terms, including Authorized Contractors of the foregoing, or otherwise related to an General Terms in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Contractor, Contractor

Contractors, or Contractor Personnel in connection with any Deliverables provided pursuant to any General Terms.

- 1.4. **“Customer Property”** means any property of or belonging to a Governmental Entity making purchases pursuant to a General Terms, including Customer Data, software, hardware, programs or other property possessed, owned, or otherwise controlled or maintained by a Governmental Entity.
- 1.5. **“Customer-Owned Deliverables”** means any custom Deliverables discovered, created, or developed by Contractor, Contractor Contractors, or Contractor Personnel at the direction and specifically for the benefit of the applicable Governmental Entity or for a Governmental Entity or for a specific project pursuant to any General Terms, 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, but shall exclude all Pre-Existing Deliverables.
- 1.6. **“Deliverables”** means all of the goods, Services, Software, System, work, work product, items, materials, property, and/or related Documentation to be created, developed, produced, delivered, performed or provided by or on behalf of, or otherwise made available through, Contractor, Contractor Contractors, or Contractor Personnel, directly or indirectly, in connection with any General Terms.
- 1.7. **“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by Contractor, Contractor Contractors, or Contractor Personnel hereunder or otherwise related to or used in conjunction with any Deliverables, in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.
- 1.8. **“General Terms”** shall mean the NASPO ValuePoint Master Agreement #AR3710 between the Lead Agency and Contractor, including all attachments thereto and any documents incorporated by reference.
- 1.9. **“Governmental Entity”** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision thereto. The term Governmental Entity includes without limitation Participating Agencies, agencies, independent agencies, the Judicial Branch, the Legislative 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.

- 1.10. "I.T. Governance Document(s)" or "Governance Document(s)"** means any Information Technology policies, standards, processes, guidelines, or procedures developed by OCIO pursuant to Iowa Code section 8B, *available at:* <https://ocio.iowa.gov/> (navigate to policies, standards, rules, respectively), and which are generally applicable to Participating Agencies, absent a waiver granted pursuant to Iowa Code section 8B.21(5) or any corresponding implementing rules.
- 1.11. "Office of the Chief Information Officer" or "OCIO"** means the Office of the Chief Information Officer of the State of Iowa created by Iowa Code chapter 8B.
- 1.12. "Non-Appropriation Event"** means any of the following:
- a. The legislature or governor fail, in the sole opinion of the applicable Governmental Entity, to appropriate funds sufficient to allow the Governmental Entity to either meet its obligations under any General Terms, or to operate as required or to fulfill its obligations under any General Terms.
 - b. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by a Governmental Entity (regardless of the source of funding or revenues) to make any payment under any General Terms are insufficient or unavailable for any other reason as determined by the Governmental Entity in its sole discretion;
 - c. If a Governmental Entity's authorization to conduct its business or engage in activities or operations related to the subject matter of any General Terms is withdrawn or materially altered or modified;
 - d. If the applicable Governmental Entity's duties, programs, or responsibilities are modified or materially altered; or
 - e. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the applicable Governmental Entity's ability to fulfill any of its obligations under any General Terms.
- 1.13. "Participating Agency"** shall have the same meaning ascribed it under Iowa Code section 8B, including any subsequent amendments or successor provisions thereto.
- 1.14. "Pre-Existing Deliverables"** shall mean all Deliverables, Documents, or other work products, including intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, Documents, or other work products that may be delivered to but are not created or developed on behalf of the applicable Governmental Entity, including any modifications or enhancements made during the performance of the Services.
- 1.15. "Purchasing Instrument"** means documentation issued by a Governmental Entity to Contractor for the purchase of Deliverables, including a **"Purchase Order"** or **"Statement**

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of Work” executed pursuant to any General Terms, regardless of form, and which identifies the Deliverables to be purchased and any other requirements deemed necessary by the applicable Governmental Entity, such as compensation and delivery dates.

- 1.16. “Security Breach”** means the unauthorized acquisition of or access to Customer Data by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, including instances in which internal personnel access systems in excess of their user rights. **“Security Breach”** shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.
- 1.17. “Services”** include without limitation all services performed or provided by or on behalf of, or otherwise made available through, Contractor, Contractor Contractors, or Contractor Personnel, directly or indirectly, in connection with any General Terms, including any Software or System or any corresponding hosting, implementation, migration, or configuration services associated therewith or related thereto.
- 1.18. “Software”** means any and all other software, programs, applications, modules and components, in object code form, and all related Source Code.
- 1.19. “Source Code”** means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.
- 1.20. “System”** means any system provided or otherwise made available by or through Contractor, Contractor Contractors, or Contractor Personnel, directly or indirectly, in connection with any General Terms, including any Software, programs, or applications associated therewith or included or incorporated therein, regardless of the method of delivery, including any Internet-enabled, Web-based or other similar delivery method.
- 1.21. “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 any General Terms.
- 1.22. “Contractor Contractor(s)”** means any of Contractors authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of

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Contractor, directly or indirectly, in performing or providing Deliverables under any General Terms.

- 1.23. “Contractor Personnel”** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Contractor or any Contractor performing or providing Deliverables under any General Terms.
- 2. Scope/Applicability.** Select Governmental Entities in the State of Iowa have the authority to enter into agreements for use by other Governmental Entities. To the extent this Amendment is executed by a Governmental Entity possessing such authority, unless another Governmental Entity possesses a separate, written agreement or amendment signed by both the specific Governmental Entity and Contractor following receipt of any required approvals, to the extent permitted by applicable law, this Amendment shall supersede any General Terms that may have been or may be separately executed by any other Governmental Entity, including through any online mechanism such as a “clickthrough” or other similar mechanism.
- 3. Grant of License or Use Rights.** Notwithstanding anything in any General Terms to the contrary, any license, use rights, or other similar rights granted by Contractor or Contractor Contractors, directly or indirectly, to a Governmental Entity pursuant to any General Terms shall include, and any Software, System, or other Deliverables provided by Contractor or Contractor Contractors, directly or indirectly, shall include, the following additional grant of rights:
- 3.1.** Any and all rights necessary for the applicable Governmental Entity to use, install, maintain, modify, support, enhance, copy, reproduce, or host any Software, System, or other Deliverables for the applicable Governmental Entity’s business activities, including as described in the Statement of Work accepted and agreed by Contractor, if any;
- 3.2.** The same grant of rights to the applicable Governmental Entity’s Authorized Contractors to the extent of any quantity ordered (regardless of whether on a “user,” “seat,” “device,” or other similar basis) by the applicable Governmental Entity.
- 3.3.** To the extent the applicable Governmental Entity intends to use, install, maintain, modify, support, enhance, or host any Software, System, or other Deliverables on a Governmental Entity’s own systems or devices, and to the extent provided for in the applicable Statement of Work as accepted and agreed by Contractor, the right to use, install, maintain, modify, support, enhance, or host such Software, System, or other Deliverables on any one or more of the computers, data center locations, networks, Internet or intranet sites, servers, systems, or other similar devices of any Governmental Entity or its Authorized Contractor(s).
- 4. Intellectual Property.**

4.1. *Ownership and Assignment of Customer-Owned Deliverables.* Contractor, Contractor Contractors, and Contractor Personnel hereby irrevocably assign, transfer, and convey to the commissioning Governmental Entity all right, title and interest in and to Customer Owned Deliverables. Contractor provide 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 Contractor or of any Third Party, including Contractor Contractors and Contractor Personnel. Contractor, Contractor Contractors, and Contractor 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, Contractor 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 Contractor.

4.2. *Waiver.* To the extent any of Contractor's, Contractor Contractor's, or any Contractor Personnel'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, Contractor, Contractor Contractors, and Contractor Personnel 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.

5. Payment. Notwithstanding anything in any General Terms to the contrary:

5.1. A Governmental Entity shall pay all undisputed amounts set forth in approved invoices in arrears and in conformance with Iowa Code Section 8A.514 and 11 Iowa Admin. Code 41.1(2). A Governmental Entity may pay in less than sixty (60) days, as provided in Iowa Code Section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code Section 8A.514. Notwithstanding, a Governmental Entity may, in its sole discretion, elect to prepay fees for services and deliverables in accordance with applicable laws, rules, policies, and procedures, including State of Iowa Accounting Policies and Procedures, *available at:*
<https://das.iowa.gov/stateaccounting/sae-policies-procedures-manual>.

5.2. In addition to the requirements of Section 6.1, if a Governmental Entity procures or makes payments for Deliverables to or from a Third Party, such as a distributor or reseller, and not from the Contractor directly, any terms or conditions regarding pricing, payment, and/or interest shall be void, and payment to such Third Party shall relieve the Governmental Entity of any obligation, responsibility, or liability related to the payment of any fees or payments due or owed for such Deliverables.

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- 6. Termination for Non-Appropriation.** Notwithstanding anything in any General Terms to the contrary, and in addition to any other termination provision(s) set forth therein, in the event of a Non-Appropriation Event, the applicable Governmental Entity may terminate any General Terms without advance notice and without penalty or liability. In the event of such termination, any further obligation owed to Contractor by the applicable Governmental Entity shall be limited by, and subject to, legally available funds. Notwithstanding anything in any General Terms to the contrary, nothing in this Amendment or any General Terms shall be construed to waive any clause regarding the availability or appropriation of funds.
- 7. Compliance with Law.** Contractor represents, warrants, covenants, and promises that Contractor, Contractor Contractors, and Contractor 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 any General Terms, including the following:

 - 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 applicable Governmental Entity's or its designee's written request, Contractor shall submit a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies to the extent required by Iowa Administrative Code chapter 11—121.
 - 7.2.** Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
 - 7.3.** Those pertaining to any permitting and licensure requirements in carrying out the work performed under any General Terms.
 - 7.4.** Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
 - 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.
 - 7.6.** All applicable I.T. Governance Document(s).

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- 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, any applicable federal requirements, including those found at 2 CFR 200.

The Contractor shall take such steps as necessary to ensure Contractor Contractors and Contractor Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Amendment or any General Terms to the contrary, Contractor, Contractor Contractors, and Contractor Personnel's failure to fulfill any requirement set forth in this Section shall be regarded as a material breach and the applicable Governmental Entity may cancel, terminate, or suspend, in whole or in part any General Terms, in whole or in part. In addition, the Contractor may be declared ineligible for future State contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

8. Confidential Information.

8.1. Contractor's Treatment of Confidential Information.

- 8.1.1.** *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. Contractor, Contractor Contractors, and Contractor Personnel may have access to Customer Data solely to the extent necessary to carry out their duties under any General Terms. Contractor, Contractor Contractors, or Contractor Personnel shall presume all Customer Data is considered confidential, hold all Customer Data in the strictest confidence, and use and permit use of Customer Data solely for the purposes of providing Deliverables under any General Terms, subject to any restrictions set forth herein or in any state and federal laws, rules, regulations, standards, and orders applicable either during the Term or thereafter. Contractor, Contractor Contractors, and Contractor Personnel shall not gather, store, log, archive, use, or otherwise retain Customer Data in any manner other than as expressly authorized by any General Terms, and will not disclose, distribute, sell, commercially or politically exploit, share, rent, assign, lease, or otherwise transfer or disseminate Customer Data to any Third Party, except as expressly permitted hereunder or as Contractor may be expressly directed in advance in writing by the applicable Governmental Entity. Contractor, Contractor Contractors, and Contractor Personnel shall not remove from any Governmental Entity's facilities or retain a copy of any Customer Data unless such removal or retention is necessary to provide or perform Deliverables, to fulfill their obligations under any General Terms, or is otherwise approved in writing by the applicable Governmental Entity. Contractor will immediately report the unauthorized disclosure of Customer Data to the applicable Governmental Entity.

8.1.2. *Destruction or Return of Customer Data.* On the applicable Governmental Entity's written request or upon expiration or termination of any General Terms for any reason, Contractor will promptly:

8.1.2.1. 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, all Customer Data; and

8.1.2.2. 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 Contractor is required to destroy Customer Data pursuant to this Section, destruction methods and standards will be included in a Statement of Work accepted and agreed by Contractor, if any;

8.1.3. *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 Contractor, Contractor may disclose Customer Data to a Third Party in accordance with such law, order, or requirement, subject to the following conditions:

8.1.3.1. 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, Contractor 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.

8.1.3.2. Contractor will consult with the applicable Governmental Entity on the advisability of taking legally-available steps to resist or narrow any required response or disclosure.

8.1.3.3. Contractor 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 Contractor or any Third Party ultimately obtaining such Customer Data. The Contractor will cooperate with and provide

assistance to the applicable Governmental Entity regarding such measures.

8.1.3.4. Solely the extent Contractor is required to disclose Customer Data to a Third Party, Contractor 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.

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

8.2. Treatment of Contractor's Confidential Information.

8.2.1. *Safeguarding Obligation.* Except as otherwise 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 Contractor's Confidential Information to a Third Party (excluding other Governmental Entities and Authorized Contractors) without the prior written consent of Contractor.

8.2.2. *Destruction or Return of Contractor's Confidential Information.* On termination or expiration of any General Terms, the applicable Governmental Entity shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at Contractor's option, all of Contractor'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).

8.2.3. *Compelled Disclosures.* Notwithstanding and in addition to the foregoing, Governmental Entities may disclose Contractor's Confidential Information:

8.2.3.1. 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;

8.2.3.2. Pursuant to any applicable laws, rules, or regulations;

8.2.3.3. If the applicable Governmental Entity reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or

8.2.3.4. If the applicable Governmental Entity, in the Governmental Entity's sole discretion, has reasonably determined Contractor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any of Contractor's Confidential Information as permitted above, a Governmental Entity shall provide written notice to Contractor of the circumstances giving rise to such disclosure no-less-than five (5) business days prior to disclosure.

8.3. Open Records and Electronic Discovery Requests and Records Retention. The Contractor will, upon the applicable Governmental Entity's request and within any time period specified by the applicable Governmental Entity, take all reasonable 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. The Contractor will use reasonable efforts to produce and provide all Customer Data or other data or information within the time period set forth in the Governmental Entity's request. The Contractor will take all steps necessary to ensure Customer Data is stored and maintained in its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, the Contractor 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.

8.4. Ancillary Agreements and Non-Disclosure Agreements. Contractor or Contractor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to an applicable Governmental Entity making purchases hereunder, such as a Business Associate Agreement ("BAA") or Criminal Justice Information System ("CJIS") Security Addendum, or any other nondisclosure or confidentiality agreements in connection with any General Terms deemed necessary by the applicable Governmental Entity ("**Ancillary Agreement(s)**").

- 8.5. 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 any General Terms in the exclusive discretion of the non-breaching Party.
- 8.6. Survives Termination.** Both Parties' 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 Contractor's, Contractor Contractor's, Contractor Personnel's, or Governmental Entity's performance of this Agreement regardless of the date any potential claim is made or discovered by the other Party.
- 9. Security Breach Notification.** The Contractor shall immediately inform the Participating Agency or OCIO, of any Security Breach. Contractor shall promptly report a Security Breach to OCIO and the Participating Agency when the breach affects the security of Customer Data.
- 10. Security Breach Responsibilities.** The Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Security Breach. In the event of a Security Breach or other event requiring notification in accordance with applicable law, the Contractor shall: (a) share information relevant to the Security Breach with OCIO and the Participating Agency; (b) promptly implement necessary remedial measures; and (c) document responsive action related to the Security Breach. If the Security Breach requires public notice, all communication must be coordinated with OCIO and the Participating Agency. Subject to Section the Limitations of Liability in Section 14, the Contractor is responsible for all notification and remedial costs and damages that arise from a Security Breach caused by the Contractor.
- 11. Use of Third Parties.** None of the Deliverables to be provided by Contractor pursuant to any General Terms shall be subcontracted or delegated to any Third Party, including Contractor 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. The Contractor is solely liable for any and all payments that may be due to Contractor Contractors pursuant to any subcontract. The Contractor shall indemnify and hold harmless by

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defending any Governmental Entity and their officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Contractor's breach of any subcontract into which it enters, including Contractor's failure to pay any and all amounts due to any Contractor Contractors. In addition, any Governmental Entity is not responsible for any failure of any Contractor Contractors to pay any amounts that may be due Contractor, and Contractor may not refuse to perform its obligations under this Agreement for any such failure. If Contractor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to Contractor or any subcontractor by any person in connection with Deliverables performed or provided under any General Terms, the applicable Governmental Entity may pay such claim and charge the amount of the payment against funds due or to become due Contractor under any General Terms. The payment of a claim in such manner shall not relieve the Contractor 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 Contractor herein. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision, or liability under this Agreement. The Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Contractor Contractors. Any action of Contractor Contractors, which, if done by Contractor, would constitute a breach of this Agreement, shall be deemed a breach by Contractor and have the same legal effect. The term **"Contractor"** as used in this Agreement shall, unless the context clearly requires to the contrary, be deemed to include Contractor Contractors and Contractor Personnel.

12. **Conflicts of Interest.** Contractor represents, warrants, and covenants that to its best knowledge and belief no relationship exists or will exist during the Term between Contractor, Contractor Contractors, or Contractor Personnel and any Governmental Entities that is or may constitute a conflict of interest or appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to any General Terms, and Contractor, Contractor Contractors, and Contractor Personnel shall not engage in any conduct or permit any Third Party from engaging in any conduct that would violate that chapter.
13. **Limitation of Liability.** If the Terms contain any provision(s) limiting Contractor's liability or providing for sole and exclusive remedies, any such provision(s) shall be superseded by or subject to the following, as applicable: Notwithstanding anything in this Amendment or any General Terms to the contrary, and solely to the extent permitted by applicable laws, rules and regulations: (a) the maximum liability of either Party under this Agreement for direct damages shall be one times the Contract Value (**"Contract Value"** is defined as the aggregate total compensation to be paid by a Governmental Entity under the entire term of the Agreement, including all renewals and extensions); provided, however, under no circumstances shall the foregoing limitation or any other provision in this amendment or any General Terms that either limits Contractor's liability or provides for sole or exclusive remedies apply to any losses, damages,

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expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:

- 13.1.** Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;
- 13.2.** Death, bodily injury, or damage to real or personal property;
- 13.3.** Any contractual obligations of Contractor pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws; confidential information; and/or Security Breach;
- 13.4.** Claims arising under this Agreement calling for indemnification of the State or for third party claims against the State for bodily injury to persons or for damage to real or tangible personal property caused by Contractor's negligence or willful conduct.

14. Indemnification.

- 14.1.** Governmental Entities to Contractor. Notwithstanding anything in this Amendment or any General Terms to the contrary, Governmental Entities shall under no circumstances have any obligation to defend or indemnify Contractor or its subcontractors, agents, or other third parties acting on its behalf for any reason.
- 14.2.** Contractor to Governmental Entities. Notwithstanding anything in this Amendment or any General Terms to the contrary, any obligation of Contractor to defend any Governmental Entity in any General Terms shall be replaced and superseded with an obligation to indemnify and hold harmless the applicable Governmental Entity and their employees, officers, board members, agents, representatives, and officials.

- 15. Records Retention and Access.** The Contractor shall maintain books, documents and records that sufficiently and properly document the Contractor'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. The Contractor shall permit any Governmental Entity or its designee, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Contractor relating directly or indirectly to Contractor's performance under any General Terms. Contractor 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. Contractor shall require Contractor Contractors to agree to the same provisions of this section.

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- 16. Reservation of Immunity.** Notwithstanding anything in any General Terms to the contrary, nothing in this Amendment or any General Terms shall 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.
- 17. Choice of Law and Forum.** All General Terms 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 any General Terms, including after expiration or termination of the same, shall be brought in a court of competent jurisdiction in the State of Iowa. Contractor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of any General Terms shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non-conveniens or otherwise. Contractor irrevocably consents to service of process by certified or registered mail addressed to Contractor's designated agent as identified in the Iowa Secretary of State's business entity records. Nothing in this provision will alter the right of any Governmental Entity to serve process in any other manner permitted by law. This Section shall survive termination of this Agreement.
- 18. Independent Contractor.** The Contractor is an independent contractor providing Deliverables to Governmental Entities.
- 19. Not a Joint Venture.** Nothing in any General Terms 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.
- 20. No Third-Party Beneficiaries.** There are no third-party beneficiaries to any General Terms.
- 21. Severability.** If any provision of this Amendment 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 Amendment.
- 22. Captions and Terms.** Unless the context 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."

- 23. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in this Agreement, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled. Any terms in any General Terms to the contrary, establishing a sole and exclusive remedy, are null and void.
- 24. Multiple Counterparts.** This Amendment may be executed in several counterparts, all of which when taken together shall amend all General Terms, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.