

NASPO ValuePoint
PARTICIPATING ADDENDUM



MMIS-PROVIDER SERVICES MODULE
Led by the State of Montana

Master Agreement #: 18091790030

Contractor: **HHS TECHNOLOGY GROUP, LLC**

Participating Entity: **STATE OF IOWA**

The following products or services are available in this contract portfolio:

- *Core Provider Services (Enrollment, Screening and Monitoring, Revalidation, and Maintenance)*
- *Option A – Provider Self Service Portal*
- *Option B – Provider Enrollment and Management Customer Care Services*

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the *MMIS-Provider Services Module* for DPHHS MPATH RFP#: DPHHS-RFP-2018-0127JT led by the State of *Montana* for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official and State Health & Human Services Office.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, 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.
3. Access to MMIS-Provider Services Requires State Medicaid Director's Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Provider Services by state executive branch agencies are subject to the authority and prior approval of the State Medicaid Director's Office. The State Medicaid Director means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of Medicaid information resources of a state.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

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Lead State:

Name:	John Thomas
Title:	Contracts Officer
Address:	Department of Administration
Telephone:	406.444.0110
Fax:	
Email:	jthomas@mt.gov

Contractor:

Name:	Bradley White, CEO
Address:	HHS Technology Group, LLC 6600 N. Andrews Ave., Suite 570 Fort Lauderdale, FL 33309
Telephone:	754-300-3366
Fax:	
Email:	Bradley.White@hhstechgroup.com

Participating Entity:

Name:	Jessica Turba
Address:	200 E. Grande Avenue, Des Moines, IA 50309
Telephone:	515-321-6404
Fax:	
Email:	Jessica.turba2@iowa.gov

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Participating Entity Modifications Or Additions To The Master Agreement

5. Modifications or Additions: These modifications or additions apply only to actions and relationships within the Participating Entity.

Modifications or Additions are included within Attachment 1. OCIO Contract Number: 2023BUS0201.

- a. For the purposes of the Participating Addendum, references to the Effective Date in the Master Agreement are defined by the Participating Addendum Term outlined below:

Participating Addendum Term.

The term of this Participating Addendum includes base contract period of 3 years with 2 optional annual renewals to co-term with the underlying agreement which includes a Design, Development, and Implementation period and base operations years. The term of this Participating Addendum, including all extensions, is from August 1, 2023 (the "Effective Date") through May 28, 2028, unless terminated pursuant to the provisions of this Contract. This Participating Addendum, including any extensions, may not exceed a total term of five (5) years.

- b. Subsection 3.2, Maximum Amount and No Increases. The Maximum Amount under the Master Agreement and Appendix A shall be as specified in the Participating Addendum.

The total costs for this Participating Addendum (DDI and ongoing operations) are specified in subsequent Purchasing Instruments executed under Attachment 1. OCIO Contract Number: 2023BUS0201.

- c. Subsection 4.2, Contractor's Project Manager and Contractor's Contract Manager. The Contractor designates its Contract Manager and Project Manager in the Participating Addendum.

Per Master Agreement Section 4.2.4 the Contractor's Project Manager for this Participating Addendum is specified in subsequent Purchasing Instruments executed under Attachment 1. OCIO Contract Number: 2023BUS0201.

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- d. Subsection 4.4, Participating Entity's Contract Manager and Project Manager. The Participating Entity will designate its Contract Manager and Project Manager in the Participating Addendum.

Per Master Agreement Section 4.4.2 the Department's Contract Manager for this Participating Addendum is specified in subsequent Purchasing Instruments executed under Attachment 1. OCIO Contract Number: 2023BUS0201.

- e. Master Agreement Appendix C - Attachment G – Pricing Schedules. Schedules A (Cost Summary), B (DDI Payment Milestones), C (Cost of Operations) and D (Enhancement Pool Hours) to Attachment G of the Master Agreement – Appendix C shall be as specified in the Participating Addendum.

The Pricing Schedules for this Participating Addendum are specified in subsequent Purchasing Instruments executed under Attachment 1. OCIO Contract Number: 2023BUS0201.

- f. Master Agreement Section 7.2.1.

The Work Plan as required in Master Agreement Section 7.2.1 is specified in subsequent Purchasing Instruments executed under Attachment 1. OCIO Contract Number: 2023BUS0201.

- g. Master Agreement Appendix C - Attachment F – Requirements Matrix.

Any changes to Attachment F – Requirements Matrix are specified in subsequent Purchasing Instruments executed under Attachment 1. OCIO Contract Number: 2023BUS0201.

- h. Exhibit 4 – Revised Appendix B – Performance Standards

Performance Standards are specified in subsequent Purchasing Instruments executed under Attachment 1. OCIO Contract Number: 2023BUS0201.

- i. Exhibit 5 - Attachment H – Resource Allocation Schedule

The Resource Allocation Schedule is specified in subsequent Purchasing Instruments executed under Attachment 1. OCIO Contract Number: 2023BUS0201.

- j. Exhibit 6 – Approved Resumes for Key Personnel

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**Approved resumes for the Contractor's Key Personnel are included in subsequent Purchasing Instruments executed under Attachment 1.
OCIO Contract Number: 2023BUS0201.**

6. Administrative Fees to be paid by the Contractor:
 - a) The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) on DDI payments received from the Participating Entity no later than sixty (60) days following the end of each calendar quarter.
 - b) Each State may assess an additional procurement administrative fee not to exceed one half of one percent (.5% or .005) on DDI payments received from the Participating Entity no later than sixty (60) days following the end of each calendar quarter. A State cannot assess a procurement administrative fee if the State requests Enhanced Federal Financial Participation reimbursement from CMS for the procurement expenditures.
7. Subcontractors: If applicable, 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.
8. 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) the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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

The parties hereto, having read this Contract in its entirety, including all attachments hereto do agree thereto in each and every particular. In witness thereof, the parties have set their hands hereunto as of the Effective Date.

Participating Entity:

DEPARTMENT OF MANAGEMENT, OFFICE OF
THE CHIEF INFORMATION OFFICER

By: 

Printed Name: Kraly Paulsen

Title: Director

Date: 8-8-23

Contractor:

HHS TECHNOLOGY GROUP, LLC

By: 

Printed Name: Bradley B white

Title: Chief Executive Officer

Date: 8/4/2023

Tax ID #: 82-1847143

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	(775) 720-3404
Email:	sberry@naspovaluepoint.org

***[Please email fully executed PDF copy of this
document to***

PA@naspovaluepoint.org

***to support documentation of participation and posting
in appropriate data bases.]***

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Exhibit 1 – Revised Attachment G – Pricing Schedules

See response to Section 5(e).

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Exhibit 2 – Project Work Plan

See response to Section 5(f).

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Exhibit 3 – Revised Requirements Matrix

See response to Section 5(g).

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Exhibit 4 – Revised Appendix B – Performance Standards

See response to Section 5(h).

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Exhibit 5 – Resource Allocation Schedule

See response to Section 5(i).

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Exhibit 6 – Approved Key Personnel

See response to Section 5(j).

**Iowa Office of the Chief Information Officer
Contracts Declaration & Execution ("CD&E")**

Title of Contract: MMIS Provider Services Module ("Agreement")		Contract Number: 2023BUS0201
State Agency's Name: Department of Management, Iowa Office of the Chief Information Officer ("OCIO")		
Vendor's Name: HHS Technology Group, LLC. ("Vendor").		
Contract to Begin/Effective Date: Date of last signature below	Date of Expiration: May 28, 2026	Annual Extensions: Up to Two (2) Annual One Year Renewals.
<p><u>Preamble.</u> This Agreement for MMIS Provider Services Module is made and is effective as of the Effective Date, by and between the State of Iowa, acting by and through the Iowa Office of the Chief Information Officer ("OCIO"), and HHS Technology Group, LLC, a limited liability company organized under the laws of the State of Delaware ("Vendor"). The parties may be referred to herein individually as a "Party" or collectively as the "Parties"; provided, however, that where the context clearly requires, the term "Party" or "Parties" may refer to or include the Governmental Entity making individual purchase(s) hereunder.</p> <p><u>Documents Incorporated/Order of Precedence.</u> This Agreement and all attachments identified below are incorporated by this reference as if fully set forth herein and together comprise the terms and conditions governing the relationship between the Parties. In the event of any conflict or inconsistency between the various provisions of this Agreement and attachments to this Agreement, such conflict or inconsistency shall be resolved in the following order:</p> <ol style="list-style-type: none"> 1. First by giving preference to ancillary agreements unique to a Governmental Entity making purchases hereunder that specifically addresses state, local, or federal regulatory or compliance concerns and which may be incorporated via a Purchasing Instrument. For the sake of clarity, this expressly does not include the project and/or payment specific terms of the Purchasing Instruments themselves, which are lowest in order of priority; 2. Second by giving preference to any Special Terms and Conditions addressing compliance terms attached hereto and incorporated by reference; 3. Third by giving preference to the specific provisions of the MMIS Provider Services Module Master Agreement Services Terms; 4. Fourth by giving preference to NASPO Contract Number 18091790030 for MMIS Provider Services Module ("NASPO Contract"), available at https://www.naspovaluepoint.org/portfolio/mmis-provider-services-module-2018-2028/hhs- 		

technology-group/ issued and awarded by and through the state of Montana via NASPO ValuePoint pursuant to Request for Proposal SK18008 ("**RFP**").

5. Fifth by giving preference to specific provisions of the RFP;
6. Sixth by giving preference to the Proposal;
7. Seventh by giving preference to the terms of any Purchasing Instruments executed hereunder.

Notes:

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

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

Pursuant to Section 13.1, Governmental Entities making purchases hereunder may require Vendor, Vendor Contractors, or Vendor Personnel to execute ancillary agreements to address compliance, legal, confidentiality, and privacy concerns that may be unique to an applicable Governmental Entity, such as a Business Associate Agreement ("BAA") or Criminal Justice Information System ("CJIS") Security Addendum, or other non-disclosure or confidentiality agreement(s) deemed necessary by the applicable Governmental Entity.

[Signatures on next page]

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: HHS Technology Group, LLC

By (Authorized Signature)

DocuSigned by:
Bradley B. White
89D24352BE29465...

Date Signed

8/4/2023

Printed Name and Title of Person Signing:

Bradley White

Chief Executive Officer

Address:

HHS Technology Group, LLC
6600 N. Andrews Avenue,
Suite 570
Fort Lauderdale, FL 33309

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

By (Authorized Signature)

Date Signed

8-8-23

Printed Name and Title of Person Signing:

Kraig Paulsen, Director

Address:

200 E. Grand Ave.
Des Moines, IA 50309

Iowa Office of the Chief Information Officer
MMIS Provider Services Module Terms

1. Overview.

- 1.1. Purpose. This Agreement establishes the terms and conditions pursuant to which a Governmental Entity may procure MMIS Provider Services Module.
- 1.2. Term. The initial term of this Agreement shall be as stated on the CD&E, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, OCIO shall have the option to extend/renew this Agreement as stated on the CD&E. The initial term and any extensions and renewals shall be collectively referred to herein as the **"Term."** The decision to extend or renew this Agreement shall be at the sole option of OCIO and may be exercised by OCIO by providing written notice to Vendor.
- 1.3. Relationship between this Agreement and Individual Purchasing Instruments. Each Purchasing Instrument executed hereunder shall be deemed, upon its execution, to 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 otherwise 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.
- 1.4. Incorporation of NASPO Contract. Governmental Entities making purchases hereunder shall be afforded all of the rights, privileges, warranties, and indemnifications afforded the Lead State Agency, and such rights, privileges, warranties, and indemnifications shall accrue and apply with equal effect to Governmental Entities making purchases hereunder. Except as otherwise provided herein or in a Purchasing Instrument, Vendor shall perform all duties, responsibilities and obligations required under the NASPO Contract in the time and manner specified thereunder. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the NASPO Contract, such conflict or inconsistency shall be resolved as stated on the CD&E.

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

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

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

- 2.8. **"Customer Data"** means all information, data, materials, or documents (including Confidential Information and Personal Data) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from the Governmental Entity, the State of Iowa, State Users, or Users, directly or indirectly, including from any Authorized Contractors of any of the foregoing, related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor in connection with any Customer-Owned Deliverables provided hereunder and all originals and copies of any of the foregoing.
- 2.9. **"Customer Property"** means any property, whether tangible or intangible, of or belonging to the Governmental Entity, including Customer Data and Customer-Owned Deliverables, software, hardware, programs, or other property possessed, owned, or otherwise controlled, maintained, or licensed by the Governmental Entity, including Third Party Software or Third Party Intellectual Property.
- 2.10. **"Customer-Owned Deliverables"** means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of the Governmental Entity or for a specific project under this Agreement, including all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto, including any underlying Source Code and related Documentation.
- 2.11. **"Deficiency"** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related to a Deliverable(s), including any failure of a Deliverable(s), to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable(s).
- 2.12. **"Deliverables"** means all of the goods, Software, work, work product, items, materials, and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with this Agreement including as may be more specifically identified, defined, and agreed upon in a Purchasing Instrument executed hereunder.
- 2.13. **"Documentation"** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel hereunder or otherwise related to or used in conjunction with any Deliverables(s), in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.
- 2.14. **"Enhancements"** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications, or other enhancements made to or with respect to the related Deliverables (including any new releases or versions related thereto) or other Deliverables provided or made available by Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, and all changes to any Documentation made by Vendor, directly or indirectly, as a result of such Enhancements.

- 2.15. **"Error"** means (i) with respect to any Deliverable(s) any defect, flaw, error, bug, or problem of any kind, or any failure of the Deliverable(s) to conform to an applicable Specification.
- 2.16. **"Error Correction"** means either a modification, procedure, or routine that corrects an Error in all material respects.
- 2.17. **"Escrow Agent"** has the meaning set forth in Section 3.1.3.4.
- 2.18. **"Escrow Agreement"** has the meaning set forth in Section 3.1.3.4.
- 2.19. **"Finally Determined"** means when a claim or dispute has been finally determined by a court of competent jurisdiction or other agreed-upon governing body and either (a) no associated appeal has timely been sought if capable of being sought, or (b) any and all appellate rights properly exercised have otherwise been exhausted.
- 2.20. **"Governmental Entity"** means any governmental entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity includes the Executive Branch, Legislative Branch, Judicial Branch, agencies, independent agencies, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government, including political subdivisions or other local governmental entities.
- 2.21. **"I.T. Governance Document(s)"** or **"Governance Document(s)"** means any Information Technology policies, standards, processes, guidelines, or procedures developed by the OCIO or, as applicable, by the Governmental Entity.
- 2.22. **"Office of the Chief Information Officer"** or **"OCIO"** means the Office of the Chief Information Officer of the State of Iowa established by Iowa Code chapter 8B.
- 2.23. **"Personal Data"** means any information relating to an identified or identifiable person, including, but not limited to, Social Security or other government-issued identification numbers, account security information, financial account information, credit/debit/gift or other payment card information, account passwords, intellectual property, document identification number, and sensitive or personal data (or equivalent terminology) as defined under any law, statute, directive, regulation, policy, standard, interpretation, order (including any and all legislative or regulatory amendments or successors thereto) regarding privacy, data protection, information security obligations, or the processing of personal data. For the avoidance of doubt, Personal Data shall include:
 - 2.23.1. **"Federal Tax Information"** or **"FTI,"** as defined by Internal Revenue Service ("IRS") Publication 1075 ("**Pub 1075**"), available at <https://www.irs.gov/pub/irs-pdf/p1075.pdf>, and corresponding Internal Revenue Code ("**IRC**") rules and regulations;
 - 2.23.2. Any data or information covered under or protected by Iowa Code chapter 715C; and
 - 2.23.3. Any data or information covered under or protected by Iowa Code sections 422.20 and 422.72.

For purposes of this definition and this Agreement, **"Process"** or **"Processing"** or **"Processed"** shall mean any operation or set of operations performed upon the Personal

Data, whether or not by automatic means, including collection, recording, organization, use, transfer, disclosure, storage, manipulation, combination, and deletion of Personal Data.

- 2.24. **"Proposal"** or **"Vendor's Proposal"** means Vendor's Response to the RFP.
- 2.25. **"Purchasing Instrument"** means an individual transactional document executed hereunder for the purchase of Services or Deliverable(s) pursuant to this Agreement, including a **"Purchase Order"** or **"Statement of Work"** executed hereunder (*see* the Sample Purchasing Instrument/Statement of Work attached hereto for a sample Statement of Work), regardless of form, and which identifies the specific Services or Deliverable(s) to be purchased and any Acceptance Criteria or Specifications related thereto.
- 2.26. **"Release Conditions"** has the meaning set forth in Section 3.1.3.4.2.
- 2.27. **"Request for Proposal"** or **"RFP"** means the Request for Proposal identified on the CD&E, including any attachments or amendments thereto.
- 2.28. **"Security Breach"** means the unauthorized acquisition of or access to Customer Data or related Deliverables by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data or related Deliverables, including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. **"Security Breach"** shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.
- 2.29. **"Services"** may include:
 - 2.29.1. Professional, Management and Support Services
 - 2.29.2. The Application Services and System(s).
 - 2.29.3. Application Services and System(s) maintenance and support services.
 - 2.29.4. Any other services within the scope of the RFP and Proposal, including services considered Value-Added Services, including as may be further defined, described, and agreed upon by the Parties in a Purchasing Instrument executed hereunder.
- 2.30. **"Software"** means any and all other software, programs, applications, modules, and components, in object code form, all related Documentation, Enhancements, and Source Code, and all copies of the foregoing.
- 2.31. **"Source Code"** means the human-readable source code, source program, scripts, or programming language, including, but not limited to, HTML, XML, XHTML, Visual Basic, and JAVA, for or related to any Software. Source Code includes all source code listings, instructions (including compile instructions), programmer's notes, commentary, and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.
- 2.32. **"Source Material"** means, with respect to the Application Services, the Source Code of such software and all related compiler command files, build scripts, scripts relating to the operation and maintenance of such application, application programming interface (API), graphical user interface (GUI), object libraries, all relevant instructions on building the object code of such application, and all documentation relating to the foregoing, such that collectively the foregoing will be sufficient to enable a person possessing reasonable skill and expertise in computer software and information technology to build, load, and operate

the machine-executable object code of such application, to maintain and support such application and to effectively use all functions and features of such software.

- 2.33. **"Special Terms and Conditions"** means any attachment hereto entitled, in whole or in part, **"Special Terms and Conditions."**
- 2.34. **"Specifications"** means any and all specifications, requirements, technical standards, performance standards, representations, warranties, criteria, and other specifications related to any Deliverable(s) described or stated in this Agreement (including any exhibit or documentation attached to, or provided in connection with, this Agreement), any Purchasing Instrument(s), the RFP, the Proposal, and, solely to the extent not inconsistent with the foregoing, the Documentation.
- 2.35. **"State Users"** means the State of Iowa, OCIO, and any other Governmental Entity as may be later designated by the Governmental Entity executing Purchasing Instruments hereunder in its sole discretion and communicated to Vendor in writing, and any employees or Authorized Contractors of any of the foregoing.
- 2.36. **"System(s)"** means the MMIS Provider Module, including any underlying or related platforms and infrastructure, and related Deliverables, as may be further defined and described in the RFP, Proposal, Special Terms and Conditions attached hereto and labeled **"Application Services/System(s) Description and related Fees,"** and related Purchasing Instruments, including any initial Purchasing Instruments of or related to the implementation or configuration of the Application Services, System(s), or related Deliverables for the Governmental Entity's specific needs or use.
- 2.37. **"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.
- 2.38. **"Third Party Intellectual Property"** shall mean intellectual property, including Third Party Software, licensed, made, conceived, or developed by a Third Party and provided or used by or on behalf of the Governmental Entity or Vendor, as applicable, including:
- 2.38.1. As it relates to intellectual property provided to the Governmental Entity by Vendor, intellectual property comprising or embedded in the Deliverables provided by Vendor under this Agreement.
- 2.38.2. As it relates to intellectual property provided to Vendor by the Governmental Entity, intellectual property comprising or embedded in any Customer Property,
- 2.39. **"Third Party Software"** means any software owned or licensed by a Third Party.
- 2.40. **"Value-Added Services"** means products, equipment, hardware, Software, or services the Governmental Entity procures through Vendor or Vendor Contractors, directly or indirectly, hereunder, including goods or services:
- 2.40.1. Which may have been expressly identified in the RFP or Proposal as optional goods or services available for purchase hereunder; or
- 2.40.2. Which are otherwise generally deemed incidental to the total transaction.
- 2.41. **"Vendor"**, in addition to its meaning in the CD&E, shall, unless the context clearly requires the contrary, be deemed to include Vendor Contractors and Vendor Personnel.

- 2.42. **"Vendor Personnel"** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Services or Deliverables under this Agreement.
- 2.43. **"Vendor Contractor(s)"** means any of Vendor's authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Services or Deliverables under this Agreement.
- 3. Services and Deliverables.**
- 3.1. Performance.
- 3.1.1. *Generally.* Vendor shall commence, complete, and deliver all work and provide all Services or Deliverables as defined by this Agreement and/or any Purchasing Instrument(s) executed by a Governmental Entity hereunder.
- 3.1.2. *Purchasing Instruments.*
- 3.1.2.1. *Generally.* Governmental Entities and Vendor may execute individual Purchasing Instrument(s) identifying specific Services or Deliverables to be purchased and provided hereunder and defining related Acceptance Criteria, Specifications, or terms and conditions associated with the performance and provisioning of such Services or Deliverables. Individual Purchasing Instruments will be effective and become valid and enforceable only when signed by both the Governmental Entity and Vendor. Once a Purchasing Instrument has been executed, Vendor will carry out and complete the duties and responsibilities set forth in the applicable Purchasing Instrument in accordance with the terms, conditions, requirements, Specifications, and Acceptance Criteria set forth in this Agreement, including any Special Terms and Conditions, the Purchasing Instrument, the RFP, the Proposal, and any Service Level Agreement or any related attachments or documents attached hereto or associated herewith, including a "project plan(s)" or other similarly captioned document.
- 3.1.2.2. *Amendments to Purchasing Instruments.* A Purchasing Instrument may be amended, modified, or replaced at any time during the Term upon the mutual written consent of Vendor and the applicable Governmental Entity.
- 3.1.2.3. *Change Order Procedure.* The 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:
- 3.1.2.3.1. *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.
- 3.1.2.3.2. *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.

- 3.1.2.3.3. *Effect of Change Order.* Both Parties must sign and date the change order to authorize the change in the Services or Deliverable(s) described therein and incorporate the changes into the applicable Purchasing Instrument and this Agreement. No Services or Deliverable(s) 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 the Purchasing Instrument or this Agreement.

3.1.3. *Delivery.*

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

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

- 3.1.3.3. *Source Code.* Vendor acknowledges and agrees that it or Vendor Contractors shall deliver and provide to the Governmental Entity all Source Code related to any Customer-Owned Deliverables and to any other Software or Deliverables as agreed to in writing by the Parties.

3.1.3.4. *Source Code Escrow.*

- 3.1.3.4.1. *Escrow Agent.* Vendor, Governmental Entity, and an escrow agent approved by the Parties ("Escrow Agent") shall concurrently with execution of this Agreement, enter into a Source Code Escrow Agreement ("Escrow Agreement"). Immediately following the execution of the Escrow Agreement, Vendor shall deliver to the Escrow Agent for deposit all Source Materials. Vendor shall continually update the Source Material by promptly depositing in the escrow each new release, update, version, enhancement, correction, patch, and improvement of the Services. Vendor's duty to update the Source Material shall continue through the Term.

- 3.1.3.4.2. *Release Conditions.* In addition to the rights and obligations contained in the Escrow Agreement, the Source Material will be held in the Escrow and the events upon which the Governmental Entity shall have access to the Source Material shall include (collectively the "Release Conditions"): (1) the insolvency of Vendor; (2) the making of a general assignment by Vendor for the benefit of its creditors or a filing of a voluntary or involuntary petition in bankruptcy by or against Vendor that is not dismissed within thirty (30) days of the filing thereof; (3) in the event Vendor ceases to provide, maintain, and/or support the Application Services for any reason other than the Governmental Entity's failure to pay for, or election not to receive, the Application Services or corresponding Support Services, whichever is applicable, and no other qualified entity has assumed the obligation to provide, maintain, and/or support the Application Services; (4) Vendor violates or commits a material breach of any term or condition of this Agreement and fails to cure said breach within the applicable cure period; (5) Vendor assigns, transfers, delegates, or subcontracts any of its obligations or duties under this Agreement without the prior written consent of the Governmental Entity; (6) Vendor violates or commits a breach of any term or condition of the Escrow Agreement, which breach has not been cured by Vendor within any applicable time period stated therein for curing such breach. Notwithstanding any other provision of this Agreement to the contrary, if a Release Condition occurs, the Governmental Entity may hire Vendor personnel to assist the Governmental Entity with using and understanding the Source Material.
- 3.1.3.4.3. *Use of Source Material.* Upon the occurrence of a Release Condition (or any other release conditions that may be specified under the Escrow Agreement), the Governmental Entity will, upon payment of the duplication cost and other handling charges of the Escrow Agent, be entitled to obtain a copy of the Source Material from the Escrow Agent. The Governmental Entity shall be entitled to use the Source Material as needed to remedy the event of release and mitigate any damages arising from such event. Such use will include, but is not limited to, the Governmental Entity's right to host, perform its own support and maintenance for, and/or alter or modify the Source Material using its own equipment and employees and/or that of those of third party contractors, including Authorized Contractors. Nothing herein shall relieve Vendor of its obligation to provide Services, including Support Services, as required under this Agreement.
- 3.1.3.4.4. *Proprietary Rights.* The Source Material referred to herein is subject to the confidentiality and proprietary provisions of Section 12. Notwithstanding the foregoing, following the occurrence of a Release Condition and subsequent release of the Source Material to the Governmental Entity, Source Material may be provided to any Authorized Contractor to service, maintain, repair, operate, or

otherwise facilitate and continue the use and operation of the Application Services as provided herein. The Governmental Entity shall require such Authorized Contractors to execute an agreement protecting the confidentiality of the Source Material consistent with the terms of this Agreement. Should use of the Source Material as provided in this Section involve the use or practice of any patent, copyright, trade secret, trademark or other proprietary information in which Vendor has an interest, Vendor, its assignee, or successors, agree not to assert a claim for patent, copyright, trade secret, trademark or other proprietary information infringement against the Governmental Entity provided the use of Application Services and Source Material is in accordance with this Agreement.

- 3.1.3.4.5. *The Governmental Entity's Right to Verify Source Material.* Regardless of whether one of the Release Conditions occurs, the Governmental Entity shall have the right, at the Governmental Entity's sole expense, to verify (itself or through use of Third Party contractors, including the Escrow Agent) the relevance, completeness, currency, accuracy, and functionality of the Source Material by, among other things, compiling the Source Material and performing test runs for comparison with the capabilities of the Application Services. In the event such testing demonstrates the Source Material does not correspond to the Application Services, Vendor shall reimburse the Governmental Entity for all costs and fees incurred in the testing and immediately deposit the correct Source Material with the Escrow Agent.
- 3.1.3.4.6. *Version Verification.* The Escrow Agreement shall provide that, upon the Governmental Entity's request, the Escrow Agent shall indicate the version of the Source Materials held in the escrow and the date such Source Materials were received from the Vendor.
- 3.1.3.4.7. *Agreement Supplementary.* The Escrow Agreement shall be "supplementary" to this Agreement within the meaning of Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). If this Agreement and/or the Escrow Agreement are/is rejected by Vendor as a debtor in possession or a trustee or by any other person or entity under the U.S. Bankruptcy Code, then the Governmental Entity may elect to retain its rights as provided in Section 365(n). The Parties intend that no bankruptcy or bankruptcy proceeding, petition, law, or regulation, and no other proceeding, petition, law, or regulation of a similar nature in any state or foreign jurisdiction, will impede, delay, or prevent the release of Source Materials to Governmental Entity in accordance with the provisions of this Agreement and the Escrow Agreement, and Vendor hereby conveys and licenses to Governmental Entity such rights, including intellectual property rights, as are necessary to allow Governmental Entity to lawfully exercise its rights hereunder. This license is granted as of the date of this Agreement and shall predate any bankruptcy petition subsequent to such date.

- 3.1.3.5. Vendor shall inform the Governmental Entity of the availability of an escrow for any Third Party Software solutions it provides to the Governmental Entity.
- 3.1.4. *Value-Added Services.* The Governmental Entity may procure Value-Added Services through Vendor. Vendor represents and warrants the following with respect to all Value-Added Services:
 - 3.1.4.1. *Equipment or hardware.* Any equipment or hardware provided hereunder will be new and unused; Title to such equipment or hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions; the Governmental Entity's use and possession of such equipment or hardware will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Vendor; and such equipment or hardware will be free of any rightful claim of any Third Party based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.
 - 3.1.4.2. *Software.* Vendor shall ensure that all Third Party Software provided hereunder, including Third Party Software comprising or embedded in the Application Services, System(s), or related Deliverables is licensed to the Governmental Entity pursuant to a license agreement, the terms and conditions of which are acceptable to the Governmental Entity.
 - 3.1.4.3. *Third Parties.* Vendor shall take all action necessary to ensure the Governmental Entity is able and entitled to receive and enjoy all warranties, indemnities, or other benefits associated with Value-Added Services provided hereunder. At the Governmental Entity's request, Vendor shall assign to the Governmental Entity all of licensor's and manufacturer's warranties, indemnities, or other associated benefits pertaining to such Value-Added Services under any related license agreement or other agreement between Vendor and the applicable Third Party.
- 3.2. Application Services/System.
 - 3.2.1. *Grant of License.* Subject to the terms and conditions of this Agreement, Vendor grants to the Governmental Entity, the State of Iowa, State Users, and their Authorized Contractors for the Governmental Entity or the State of Iowa's governmental and business activities and purposes, including for the provisioning of information and services to State Users, Users, and, to the extent federal funds are used to pay for the Application Services or System(s), in whole or in part, the federal government, during the Term a non-exclusive license to: (i) access, use, and, to the extent applicable, maintain and support, the Application Services, System(s), and related Deliverables; and (ii) access, use, reproduce, and distribute Documentation.
 - 3.2.2. *Implementation/Configuration.* Vendor will implement, modify, and configure the Application Services, System(s), and related Deliverables to satisfy the Governmental Entity's specific needs in accordance with the terms and conditions of applicable Purchasing Instrument(s), the RFP, and Proposal, and any related "project plan(s)" or other similarly captioned document.

- 3.2.3. *Not Required to Accept or Install Enhancements.* Vendor shall not condition the Governmental Entity's rights or Vendor's obligations under this Agreement, or any other contract, on the Governmental Entity accepting or installing any Enhancements related to the Application Services, System(s), or related Deliverables.

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

- 4.1. Pricing/Compensation. The fees for the Services, Deliverables shall be in accordance with the RFP, Proposal and as set forth in the applicable Purchasing Instrument(s). Failure of the Governmental Entity to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of any Services or Deliverables, so long as payment of such undisputed fees is made within the applicable cure period. For the avoidance of doubt, in the event of any dispute related to fees, Vendor shall continue to perform and provide Services and Deliverables, until such dispute has been Finally Determined by a court of competent jurisdiction or other agreed-upon governing body.
- 4.2. No Additional Fees. Other than as permitted by Section 4.1 (Pricing/Compensation), the Governmental Entity shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement or any Purchasing Instrument(s). For the avoidance of doubt, there shall be no reimbursable expenses associated with this Agreement, and Vendor shall be solely responsible for all other costs, charges, and expenses it incurs in connection with this Agreement, including equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, travel and lodging, and all other operational and administrative costs and expenses.
- 4.3. Payment does not Imply Acceptance. Payment, including final payment, shall not be construed as acceptance of any Services or Deliverables with Deficiencies, Errors, or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the Governmental Entity shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the Governmental Entity.
- 4.4. Invoices. Upon receipt of written notice of Acceptance from the Governmental Entity with respect to one or more Services or Deliverable(s), or in the frequencies set forth in the applicable Purchasing Instrument Vendor shall submit an invoice to the Governmental Entity requesting payment of the fees or other compensation to which it is entitled under Section 4.1(Pricing/Compensation), less any Retained Amount(s) to be withheld in accordance with Section 4.5 (Retention) or other applicable offsets. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges, or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Governmental Entity. The Governmental Entity shall verify Vendor's performance/provisioning of Services or Deliverable(s) outlined in the invoice before making payment. The Governmental Entity shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code section 8A.514 and corresponding implementing rules, regulations, and policies. The Governmental Entity may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code section 8A.514. Notwithstanding

anything herein to the contrary, the Governmental Entity shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Governmental Entity believes the invoice is inaccurate or incorrect in any way. Notwithstanding, the Participating Governmental Entity, in its sole discretion, may elect to prepay fees for services and deliverables in accordance with applicable laws, rules, policies, and procedures, including State of Iowa Accounting Policies and Procedures, available at: <https://das.iowa.gov/state-accounting/sae-policies-procedures-manual>.

- 4.5. Retention. To secure Vendor's performance under this Agreement, the Governmental Entity may retain 15% of the fees or other compensation associated with each Deliverable provided under a Purchasing Instrument ("**Retained Amounts**") until all Deliverables under such Purchasing Instrument have been supplied/provided and the Governmental Entity has given its Final Acceptance. Retained Amounts shall be payable upon the Governmental Entity's delivery of written notice of Final Acceptance, subject to the terms and conditions hereof.
- 4.6. Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Governmental Entity the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Vendor or notification by the Governmental Entity of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Governmental Entity under this Section 4.6 (Erroneous Payments and Credits), the Governmental Entity may charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount otherwise allowed by law, whichever is greater. The Governmental Entity may, in its sole discretion, elect to have Vendor apply any amounts due and owing the Governmental Entity under this Section 4.6 (Erroneous Payments and Credits) against any amounts payable by the Governmental Entity under this Agreement.
- 4.7. Set-off Against Sums Owed by Vendor. In the event Vendor owes the Governmental Entity any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Governmental Entity may set off such sum against any sum invoiced to the Governmental Entity by Vendor in the Governmental Entity's sole discretion. Any amounts due the Governmental Entity as damages may be deducted by the Governmental Entity from any money or sum payable by the Governmental Entity to Vendor pursuant to this Agreement or any other agreement between Vendor and the Governmental Entity.
- 4.8. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Governmental Entity may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the Governmental Entity or work stoppage by Vendor, in the event the Governmental Entity determines:
 - 4.8.1. Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or
 - 4.8.2. Any Deliverable has failed to meet or conform to any applicable Acceptance Criteria or Specification(s) or contains or is experiencing a material Deficiency or Error(s).

No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Governmental Entity under this Agreement.

- 4.9. Correction/Cure. The Governmental Entity may correct any Deficiencies or Errors with respect to any Deliverable(s) or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies or Errors as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the Governmental Entity. The Governmental Entity may procure the Deliverable(s) reasonably necessary to correct any Deficiencies or Errors or cure any Vendor default, in which event Vendor shall reimburse the Governmental Entity for the actual costs incurred by the Governmental Entity for such Deliverable(s) or cure, including the reasonable value of the time expended by the Governmental Entity's personnel or its Authorized Contractors to secure substitute Deliverable(s) or cure such default. In addition, Vendor shall cooperate with the Governmental Entity or any Third Parties retained by the Governmental Entity which assist in curing such default, including by allowing access to any pertinent materials, work product, or intellectual property of Vendor's.
- 4.10. Error Correction. With respect to each notice from the Governmental Entity to Vendor during the Term that notifies Vendor that any Deliverable(s) provided by Vendor, including those previously accepted by the Governmental Entity, contains or experiences a Deficiency or Error, Vendor shall, at no cost to the Governmental Entity, promptly:
- 4.10.1. Correct the Deficiency or Error and repair the affected Deliverable(s), and
- 4.10.2. Provide the Governmental Entity with all necessary and related materials related to such repaired or corrected Deliverable(s) including, to the extent applicable, the provision of new Source Code, master program disks, or other media acceptable to the Governmental Entity, and related Documentation.
- 4.11. Repayment Obligation. In the event that any State of Iowa or federal funds are deferred or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, Vendor will be liable to the Governmental Entity for the full amount of any claim disallowed (or the amount of funds expended in violation of such applicable laws) and for all related penalties incurred. If the State of Iowa or any federal agency concludes Vendor has been paid for any cost that is unallowable, unallocable, or unreasonable under this Agreement, Vendor will be liable to the Governmental Entity for such cost. Vendor shall pay to the Governmental Entity all amounts for which the Vendor is liable under this Section 4.11 (Repayment Obligation) within ten (10) business days of receiving the Governmental Entity's written demand or written notice. The Governmental Entity may withhold any payment under this Agreement if Vendor fails to timely make any payment required by this Section 4.11 (Repayment Obligation).
- 4.12. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 4 (Compensation and Additional Rights and Remedies) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.
- 4.13. Administrative Fees. Without affecting the prices/rates, Vendor is authorized to charge the Governmental Entity hereunder, Vendor shall provide to OCIO a 1.00% administrative fee on the sales made by and through this PO. This 1.00% administrative fee shall be paid quarterly to:

Attn: Business Services Division Administrator

Iowa Office of the Chief Information Officer

200 E Grand Ave.

Des Moines, IA 50309

Payment shall be made in accordance with the following schedule:

Period End	Fee Due
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

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

5.1. Acceptance Testing. All Deliverables, shall be subject to the Governmental Entity's Acceptance Testing and Acceptance, as may be further described in a Purchasing Instrument(s). Upon completion of all work to be performed by Vendor with respect to any Deliverable or group of Deliverables, Vendor shall deliver a written notice to the Governmental Entity certifying that the foregoing meets and conforms to applicable Acceptance Criteria and is ready for the Governmental Entity to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable(s), to determine that it meets and operates in accordance with applicable Acceptance Criteria prior to delivering such notice to the Governmental Entity. At the Governmental Entity's request, Vendor shall assist the Governmental Entity in performing Acceptance Tests at no additional cost to the Governmental Entity. Within a reasonable period of time after the Governmental Entity has completed its Acceptance Testing, the Governmental Entity shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable, or any portion thereof, evaluated during such Acceptance Testing. If the Governmental Entity determines that a Deliverable(s), in whole or in part, satisfies its Acceptance Tests, the Governmental Entity shall provide Vendor with notice of Acceptance with respect to such Deliverable(s). If the Governmental Entity determines that a Deliverable(s), in whole or in part, fails to satisfy its Acceptance Tests, the Governmental Entity shall provide Vendor with notice of Non-Acceptance with respect to such Deliverable(s). In the event the Governmental Entity provides notice of Non-Acceptance to Vendor with respect to any Deliverable(s), Vendor shall correct and repair such Deliverable(s), and submit it to the Governmental Entity within ten (10) days of Vendor's receipt of notice of Non-acceptance so the Governmental Entity may re-conduct its Acceptance Tests with respect to such Deliverable(s). In the event the Governmental Entity determines after re-conducting its Acceptance Tests such Deliverable(s) continue to fail to satisfy its Acceptance Tests, then the Governmental Entity shall have the continuing right, at its sole option, to:

- 5.1.1. Require Vendor to correct and repair such Deliverable(s) within such period of time as the Governmental Entity may specify in a written notice to Vendor;
- 5.1.2. Refuse to accept such Deliverable(s), without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such

Deliverable(s) or receive a refund of any fees or amounts already paid with respect to such Deliverable(s);

- 5.1.3. Accept such Deliverable(s) on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Governmental Entity's satisfaction, the Deficiencies or Errors present therein and any reduced value or functionality of such Deliverable(s) or the costs likely to be incurred by the Governmental Entity to correct such Deficiencies or Errors; or
- 5.1.4. Terminate the applicable Purchasing Instrument or seek any and all available remedies, including damages. Notwithstanding any other provisions of this Agreement related to termination, the Governmental Entity may terminate a Purchasing Instrument in its entirety pursuant to this Section 5.1.4 without providing Vendor any notice or opportunity to cure.

The Governmental Entity's right to exercise the foregoing rights and remedies, including termination of the applicable Purchasing Instrument, shall remain in effect until Acceptance Tests are successfully completed to the Governmental Entity's satisfaction and the Governmental Entity has provided Vendor with written notice of Final Acceptance. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Governmental Entity's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any Deficiency or Error is later discovered with respect to such Deliverable(s). In addition, Vendor's receipt of any notice of Acceptance with respect to any Deliverable(s) shall not be construed as a waiver by the Governmental Entity of its right to refuse to provide notice of Final Acceptance.

5.2. Project Management and Reporting.

- 5.2.1. *Vendor or Project Manager.* Vendor shall designate, in writing, a Project Manager acceptable to the Governmental Entity. Vendor will assign a Project Manager of a management level sufficient to ensure timely responses from all Vendor Personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the Governmental Entity prior to his or her appointment as Vendor's Project Manager. Vendor represents and warrants that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her or him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Governmental Entity's site as needed during the course of work and will be available either in person, by telephone, or by email to respond promptly during the business day to inquiries from the Governmental Entity.
- 5.2.2. *Review Meetings.* Vendor's Project Manager shall meet weekly with the Governmental Entity's project manager and representatives, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor or performance issues. At each review meeting, Vendor's Project Manager shall provide a status report, which shall include, at minimum, the information described in Section 5.2.3 (Reports) and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, Vendor shall provide a report setting forth

activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any Party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance of this Agreement.

- 5.2.3. *Reports.* Vendor shall provide the Governmental Entity with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Services or Deliverables, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Governmental Entity may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Governmental Entity's approval.
- 5.2.4. *Problem Reporting Omissions.* The Governmental Entity's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity the Governmental Entity may have. The Governmental Entity's failure to identify the extent of a problem, Deficiency, or Error, or the extent of damages incurred as a result of a problem, Deficiency, or Error, shall not act as a waiver of performance or constitute Acceptance under this Agreement.

6. Ownership and Intellectual Property.

- 6.1. Ownership of Vendor-Owned Deliverables. Except as specifically granted in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Vendor shall own all Deliverables that were independently and exclusively developed by Vendor prior to the Effective Date of this Agreement ("**Vendor-Owned Deliverables**").
- 6.2. Ownership and Assignment of Customer-Owned Deliverables. Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably assigns, transfers, and conveys to the Governmental Entity all right, title and interest in and to Customer-Owned Deliverables. Vendor represents and warrants that the Governmental Entity shall acquire good and clear title to all Customer-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including Vendor Contractors and Vendor Personnel. Vendor, Vendor Contractors, and Vendor Personnel shall not retain any property interests or other rights in or to Customer-Owned Deliverables and shall not use any Customer-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Governmental Entity commissioning such Deliverables and the payment of such royalties or other compensation as the Governmental Entity deems appropriate. Immediately upon the request of the Governmental Entity, Vendor will deliver to the Governmental Entity or destroy, or both, at the Governmental Entity's option, all copies of any Customer-Owned Deliverables in the possession of Vendor.
- 6.3. Waiver. To the extent any of Vendor's, Vendor Contractor's, or any Vendor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights or any rights of attribution or integrity, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the Governmental Entity's rights in and to Customer-Owned Deliverables.

- 6.4. Acknowledgement. Vendor acknowledges and agrees that the Governmental Entity, as owner and assignee of Customer-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation:
- 6.4.1. Obtain, secure, file, and apply for any legal protection necessary to secure or protect any rights in and to Customer-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto;
 - 6.4.2. Adapt, change, modify, edit, or otherwise use Customer-Owned Deliverables as the Governmental Entity sees fit, including in combination with the works of others, prepare derivative works based on Customer-Owned Deliverables, and publish, display, perform, host, and distribute throughout the world any Customer-Owned Deliverable(s) in any medium, whether now known or later devised, including any digital or optical medium; and
 - 6.4.3. Make, use, sell, license, sublicense, lease, or distribute Customer-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party, including Vendor Contractors or Vendor Personnel.
- 6.5. Further Assurances. At the State of Iowa's or Governmental Entity's request, Vendor will both during and after the termination or expiration of this Agreement, execute and deliver such instruments, provide all facts known to it, and take such other action as may be requested by the State of Iowa or Governmental Entity to:
- 6.5.1. Establish, perfect, or protect the Governmental Entity's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers, and conveyances set forth in Section 7.2 (Ownership and Assignment of Customer-Owned Deliverables); and
 - 6.5.2. Obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof.

In the event the Governmental Entity is unable, after reasonable effort, to secure Vendor's, Vendor Contractor's, or any Vendor Personnel's signature on any letters patent, copyright, or other analogous protection relating to the Customer-Owned Deliverables, for any reason whatsoever, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably designates and appoints the Governmental Entity and its duly authorized officers, employees, and agents, as their agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Vendor.

- 6.6. Third Party Intellectual Property. Except as otherwise agreed to by the Parties in writing, in the event a Deliverable(s) is comprised of Third Party Intellectual Property, Vendor shall ensure such Deliverables is licensed to the Governmental Entity pursuant to a license agreement, the terms and conditions of which are acceptable to the Governmental Entity. Unless otherwise agreed to by the Governmental Entity in writing, such license shall be 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 Governmental Entity's behalf, including its Authorized Contractors.

- 6.7. Rights of the Federal and State Government. If all or a portion of the funding used to pay for Customer-Owned Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights, including a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes, the Customer-Owned Deliverables developed under this Agreement and the copyright in and to such Customer-Owned Deliverables.
- 6.8. Customer Property. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement and in compliance with Governmental Entity's security and confidentiality requirements. Customer Property shall at all times remain the property of the Governmental Entity or applicable Third Party owning Customer Property that has been licensed to the Governmental Entity. Vendor, Vendor Contractors, Vendor Personnel or related Deliverables shall comply with any and all the license terms, conditions, or restrictions applicable to any Customer Property that has been licensed to the Governmental Entity or otherwise made available or accessible to the Governmental Entity or Vendor by a Third Party, including to the extent related Deliverables must interface, integrate, or connect to such Customer Property. Vendor shall indemnify and hold harmless the Governmental Entity and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs, and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Vendor's, Vendor Contractor's, or Vendor Personnel's, or related Deliverables breach of any license terms, conditions, or restrictions applicable to, or violation or misappropriation of any intellectual property rights or interests in, any Customer Property that has been licensed to the Governmental Entity or otherwise made available or accessible to the Governmental Entity or Vendor by a Third Party.
- 6.9. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 7 (Ownership and Intellectual Property) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.

7. Representations, Warranties, and Covenants.

- 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 Errors; and (ii) meet, conform to and operate in accordance with all Acceptance Criteria and in accordance with this Agreement. During the Term, Vendor shall, within ten (10) days of receiving notice of such Deficiencies, Errors, or failures from the Governmental Entity and at its expense, repair, correct, or replace any Deliverable(s) that contains or experiences material Deficiencies or Errors or fails to meet, conform to, or operate in accordance with Acceptance Criteria or Specification(s). The foregoing shall not constitute an exclusive remedy under this Agreement, and the Governmental Entity shall be entitled to pursue any other available contractual, legal, or equitable remedies. Vendor shall be available at all reasonable times to assist the Governmental Entity with questions, problems, and concerns

about the Deliverable(s); to inform the Governmental Entity promptly of any known Deficiencies or Errors in any Deliverable(s); repair and correct any Deliverable(s) not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable(s) may have been accepted by the Governmental Entity; and provide the Governmental Entity with all necessary materials and any related Services with respect to such repaired or corrected Deliverable(s). Acceptance Testing will not in any way relieve Vendor of its responsibilities to correct any material Deficiency or Error.

- 7.2. Fitness for Intended Purpose. Vendor represents and warrants that it is fully aware of the Governmental Entity's requirements and intended purposes and uses for the Deliverables, including as may be further identified or defined in a subsequent Purchasing Instrument executed hereunder, and that the Deliverables shall satisfy such requirements, including all Specifications, in all material respects and are fit for their intended purposes and uses.
- 7.3. Quiet Enjoyment. Vendor represents and warrants that: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide Deliverables to the Governmental Entity hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed the Governmental Entity hereunder without violating any rights of any Third Party; (ii) it has not previously and will not grant any rights in any Deliverables to any Third Party that are inconsistent with the rights granted to the Governmental Entity herein; and (iii) the Governmental Entity shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption, or interruption.
- 7.4. Intellectual Property. Vendor represents and warrants that: (i) the Deliverables and all intellectual property rights therein and related thereto; and (ii) the Governmental Entity's use of, and exercise of any rights with respect to, the Deliverables, (and all intellectual property rights therein and related thereto), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress, or other intellectual property right, proprietary right, or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation, or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret related to any Deliverables. Vendor shall inform the Governmental Entity in writing immediately upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation 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 Governmental Entity's request and at Vendor's sole expense: (i) procure for the Governmental Entity the right or license to continue to use the Deliverable(s) at issue, or relevant aspect thereof; (ii) replace the infringing, violating, or misappropriated aspects of such Deliverable(s) with a functionally equivalent replacement; (iii) modify or replace the affected portion of the Deliverable(s), the with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable(s) at issue and refund to the Governmental Entity all fees, charges, and any other amounts paid by the Governmental Entity under this Agreement or any related agreement with respect to such Deliverable(s). In addition, Vendor agrees to indemnify and hold harmless the Governmental Entity and its officers, directors, employees, officials, and agents as provided in the Indemnification section of this Agreement, including for any breach of the representations and warranties made by Vendor in this Section 8.4 (Intellectual Property).

The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Governmental Entity under this Agreement or otherwise and shall survive termination of this Agreement.

- 7.5. Workmanlike Manner. Vendor represents, warrants, and covenants that all Services to be performed under this Agreement shall be performed in a professional, competent, diligent, and workmanlike manner by knowledgeable, trained, and qualified personnel, all in accordance with the terms and conditions of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Governmental Entity notifies Vendor of any Services performed in violation of this standard, Vendor shall re-perform the Services at no cost to the Governmental Entity, such that the Services are rendered in the above-specified manner, or if Vendor is unable to perform the Services as warranted, Vendor shall reimburse the Governmental Entity any fees or compensation paid to Vendor for the unsatisfactory Services.
- 7.6. Compliance with Law. Vendor represents, warrants, covenants, and promises that Vendor, Vendor Contractors, and Vendor Personnel have complied with, and shall continue to comply, and, to the extent applicable, the Deliverables comply with all applicable federal, state, foreign, and local laws, rules, regulations, codes, standards, ordinances, and orders both generally and in connection with the performance of this Agreement, including the following:
- 7.6.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and corresponding rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the Governmental Entity's written request, Vendor shall submit to the Governmental Entity a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
- 7.6.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
- 7.6.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 7.6.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 7.6.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.1, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
- 7.6.6. All applicable I.T. Governance Document(s).
- 7.6.7. To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the federal government, any terms or conditions required to be included in a contract between the Governmental Entity and a contractor pursuant to applicable federal laws, regulations, circulars, and bulletins,

which terms and conditions are incorporated by reference into this Agreement as if fully set forth herein and contractual obligations of Vendor.

7.6.8. IRS Pub 1075.

7.6.9. Iowa Code sections 422.20 and 422.72.

Vendor shall take such steps as necessary to ensure Vendor Contractors and Vendor Personnel are bound by the terms and conditions contained in this Section 8.6 (Compliance with Law). Notwithstanding anything in this Agreement to the contrary, Vendor, Vendor Contractors, and Vendor Personnel's failure to fulfill any requirement set forth in this Section 8.6 (Compliance with Law) shall be regarded as a material breach of this Agreement the Governmental Entity may cancel, terminate, or suspend, in whole or in part, this Agreement or any Purchasing Instruments executed hereunder. In addition, the Governmental Entity may declare Vendor or Vendor Contractors ineligible for future Governmental Entity contracts in accordance with authorized procedures or Vendor or Vendor Contractors may be subject to other sanctions as provided by law or rule.

- 7.7. No Conflicts. Vendor represents, warrants, and covenants that no relationship existed at the time of the formation of this Agreement, or will exist during the Term of the Agreement, between Vendor, Vendor Contractors, or Vendor Personnel and the Governmental Entity or the State of Iowa or any of its employees or Authorized Contractors that is or may constitute a conflict of interest or appearance of impropriety, or that would conflict in any manner or degree with the performance of its obligations under this Agreement. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement and any Purchasing Instruments executed hereunder, and Vendor, Vendor Contractors, and Vendor Personnel shall not engage in or permit any Third Party to engage in any conduct that would violate that chapter.
- 7.8. Up to Date on Payments. Vendor represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the State of Iowa, including the payment of taxes and employee benefits, and covenants and warrants it will not become so during the Term, or any extensions thereof.
- 7.9. Documentation. Vendor represents, warrants, and covenants that during the Term, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains, and the Documentation will enable the Governmental Entity to use such Deliverable(s) for their intended purposes.
- 7.10. Preservation of Implied Warranties. All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the Services, Deliverables to be provided, or by provision of samples to the Governmental Entity, shall not be construed as limiting or negating any warranty provided by law, including warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Services, Deliverables provided by Vendor or performance or provisioning thereof.
- 7.11. Cumulative Warranties. Except to the extent otherwise provided herein, Vendor's warranties provided in this Section 8 (Representations, Warranties, and Covenants) are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Governmental Entity.

- 7.12. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 7 (Representations, Warranties, and Covenants) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.

8. Indemnification.

- 8.1. Generally. Vendor and its successors and permitted assigns shall indemnify and hold harmless the 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, fines, penalties, taxes, costs, and any other 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 Indemnatee) 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;
 - 8.1.2. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, Vendor Contractors, or Vendor Personnel;
 - 8.1.3. Vendor's, Vendor Contractor's, or Vendor Personnel's performance or attempted performance of this Agreement;
 - 8.1.4. Vendor, Vendor Contractors, or Vendor Personnel's failure to comply with any applicable local, state, and federal laws, rules, ordinances, regulations, standards, or orders in the performance of this Agreement, including Pub 1075;
 - 8.1.5. Any failure by Vendor or Vendor Contractors to make all reports, payments, withholdings, or provide any insurance required by federal and state law, including with respect to Social Security, workers compensation, employee income, the Affordable Care Act, and other taxes, fees, or costs required by Vendor or Vendor Contractors to conduct business in the State of Iowa;
 - 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, the Application Services, or System(s) provided under this Agreement, including any Security Breach;
 - 8.1.7. Vendor's, Vendor Contractor's, or Vendor Personnel's breach of any license terms, conditions, or restrictions applicable to, or violation or misappropriation of any intellectual property rights or interests in, any Customer Property that has been licensed to the Governmental Entity or otherwise made available or accessible to the Governmental Entity or Vendor by a Third Party;
 - 8.1.8. 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, including any Security Breach caused, in whole or in part, by Vendor, Vendor Contractors, or Vendor Personnel;

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

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 Governmental Entity under this Agreement, at law, or in equity, the Governmental Entity shall have the right, at its sole option, to terminate this Agreement or any applicable Purchasing Instrument, in whole or in part, and have Vendor refund to the Governmental Entity all associated fees, compensation or other amounts paid by the Governmental Entity .

- 8.3. Vendor's obligations under this Section 8 (Indemnification) 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, obligations, and liabilities as set forth in this Section 8 (Indemnification) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or any other Indemnitee.

9. Default and Termination.

- 9.1. Termination for Cause by the Governmental Entity. The Governmental Entity may terminate this Agreement or a Purchasing Instrument(s) upon written notice of Vendor's breach of any material term, condition, or provision of this Agreement or the applicable Purchasing Instrument, if such breach is not cured within the time period specified in the Governmental Entity's notice of breach or any subsequent notice or correspondence delivered by the Governmental Entity to Vendor, provided that cure is feasible. Any time

allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for any damages, including any liquidated damages. In addition, the Governmental Entity may terminate this Agreement or Purchasing Instrument effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

- 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's or Vendor Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 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; or
- 9.1.7. The Governmental Entity determines or believes Vendor has engaged in conduct that has or may expose the Governmental Entity to material liability;
- 9.1.8. Vendor or any Deliverable(s) infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress, or any other intellectual property right or proprietary right, or misappropriates or allegedly misappropriates a trade secret; or
- 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 is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect;
 - 9.1.9.2. Filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - 9.1.9.3. Consenting to any relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - 9.1.9.4. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
 - 9.1.9.5. Making an assignment for the benefit of creditors;

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

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

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

- 9.2. Termination for Cause by Vendor. Vendor may only terminate an applicable Purchasing Instrument upon written notice of the breach by the Governmental Entity of any material term, condition, or provision of this Agreement related thereto, if such breach is not cured within sixty (60) days of the Governmental Entity's receipt of Vendor's written notice of breach.
- 9.3. Termination for Convenience. Following thirty (30) days written notice, the Governmental Entity may terminate this Agreement or a Purchasing Instrument, in whole or in part, for convenience without the payment of any penalty or incurring any further obligation or liability to Vendor. Termination for convenience may be for any reason or no reason at all.
- 9.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, the Governmental Entity shall, upon written notice, have the right to terminate this Agreement or a Purchasing Instrument, in whole or in part, without penalty or liability and without any advance notice as a result of any of the following:
- 9.4.1. The legislature, governor, or other applicable governing body fail, in the sole opinion of the Governmental Entity, to appropriate funds sufficient to allow the Governmental Entity to either meet its obligations under this Agreement or the applicable Purchasing Instrument or to operate as required and to fulfill its obligations under this Agreement or the applicable Purchasing Instrument;
 - 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 the Governmental Entity to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Governmental Entity in its sole discretion;
 - 9.4.3. If the Governmental Entity's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified;
 - 9.4.4. If the 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 arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Governmental Entity's ability to fulfill any of its obligations under this Agreement or the applicable Purchasing Instrument.

- 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 the Governmental Entity pursuant to Section 10.1 (Termination for Cause by the Governmental Entity)), the Governmental Entity shall pay only those amounts, if any, due and owing to Vendor for Services, Deliverables for which Acceptance has been provided by the Governmental Entity up to and including the date of termination of this Agreement or the applicable Purchasing Instrument and for which the Governmental Entity is otherwise obligated to pay pursuant to this Agreement; provided however, that the Governmental Entity's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.5 (Limitation of Payment Obligations) in no way limits the rights or remedies available to the Governmental Entity and shall not be construed to require the Governmental Entity to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts otherwise withheld by the Governmental Entity in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, the Governmental Entity shall not be liable, under any circumstances, for any of the following:
- 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, Vendor Contractors, or Vendor Personnel in the performance of the Agreement, including startup costs, overhead, or other costs associated with the performance of the Agreement;
 - 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; or
 - 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. As it relates to this Agreement or any Purchasing Instrument executed hereunder, upon receipt of notice of termination, upon expiration, or upon request of the Governmental Entity, Vendor shall:
- 9.6.1. Except as otherwise directed by the Governmental Entity pursuant to Section 10.6.6, cease work under this Agreement or the applicable Purchasing Instrument and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, within thirty (30) days of the date of notice of termination, expiration, or request, describing the status of all work performed under the Agreement and such other matters as the Governmental Entity may require.
 - 9.6.2. As directed by the Governmental Entity, immediately cease using and return to the Governmental Entity any Customer Property provided by the Governmental Entity, directly or indirectly, to Vendor or Customer-Owned Deliverables prepared or developed by Vendor for the Governmental Entity hereunder.
 - 9.6.3. Comply with any directions related to Vendor's destruction or return of Customer Data in accordance with Section 11.1.2 (Destruction or Return of Customer Data).

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

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

- 9.7. Survival. Expiration or termination of this Agreement or a Purchasing Instrument for any reason will not release either Party from any duties, liabilities, or obligations set forth in this Agreement which:
 - 9.7.1. The Parties have expressly agreed in writing survive any such expiration or termination, including as set forth in the following Sections:
 - 9.7.1.1. 4 (Compensation and Additional Rights and Remedies);

- 9.7.1.2. 7 (Ownership and Intellectual Property);
- 9.7.1.3. 8 (Representations, Warranties, and Covenants);
- 9.7.1.4. 9 (Indemnification);
- 9.7.1.5. 10 (Term and Termination);
- 9.7.1.6. 11 (Confidentiality);
- 9.7.1.7. 12 (Security/Privacy, Business Continuity, and Disaster Recovery); and
- 9.7.1.8. 13 (General Provisions).

9.7.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

9.8. **Termination for Non-Appropriation.** Notwithstanding anything in the NASPO Contract or any Related Agreements to the contrary, and in addition to any other termination provision(s) set forth therein, in the event of a Non-Appropriation Event, the Participating Governmental Entity or OCIO may terminate the PO in whole or in part, without advance notice and without penalty or liability to the Participating Governmental Entity. In the event of such termination, any further obligation owed to Vendor by the Participating Governmental Entity shall be limited by, and subject to, legally available funds. For purposes of this Section the term "**Non-Appropriation Event**" means any of the following:

- 9.8.1. The legislature or governor fail, in the sole opinion of the Participating Governmental Entity, to appropriate funds sufficient to allow the Participating Governmental Entity to either meet its obligations under the PO, this Supplemental, the NASPO Contract, or any Related Agreements or to operate as required or to fulfill its obligations under the same;
- 9.8.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Participating Governmental Entity (regardless of the source of funding or revenues) to make any payment in accordance with the terms of this Supplemental, the NASPO Contract, or any Related Agreements are insufficient or unavailable for any other reason as determined by the Participating Governmental Entity in its sole discretion;
- 9.8.3. If the Participating Governmental Entity's authorization to conduct its business or engage in activities or operations related to the subject matter of the PO, this Supplemental, the NASPO Contract, or any Related Agreements is withdrawn or materially altered or modified;
- 9.8.4. If the Participating Governmental Entity's duties, programs, or responsibilities are modified or materially altered; or
- 9.8.5. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Participating Governmental Entity's ability to fulfill any of its obligations under this Supplemental, the NASPO Contract, or any Related Agreements.

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 Governmental Entity, and the Governmental Entity shall retain exclusive rights thereto and ownership thereof. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Data solely to the extent necessary to carry out their duties under the Agreement. Vendor, Vendor Contractors, or Vendor Personnel shall presume all Customer Data is considered confidential, hold all Customer Data in the strictest confidence, and use and permit use of Customer Data solely for the purposes of providing Services, Deliverables under this Agreement, subject to any restrictions set forth herein or in any state and federal laws, rules, regulations, standards, and orders applicable either during the Term or thereafter. Vendor, Vendor Contractors, and Vendor Personnel shall not gather, store, log, archive, use, or otherwise retain Customer Data in any manner other than as expressly authorized by this Agreement and will not disclose, distribute, sell, commercially or politically exploit, share, rent, assign, lease, or otherwise transfer or disseminate Customer Data to any Third Party, except as expressly permitted hereunder or as Vendor may be expressly directed in advance by the Governmental Entity in writing. Vendor, Vendor Contractors, and Vendor Personnel shall not remove from any Governmental Entity facilities or retain a copy of any Customer Data unless such removal or retention is necessary to provide or perform Services, Deliverables to fulfill their obligations under this Agreement or is otherwise approved by the Governmental Entity in writing. Vendor will immediately report the unauthorized disclosure of Customer Data to the Governmental Entity.
- 10.1.2. *Destruction or Return of Customer Data.* Upon completion of duties under this Contract or upon the specific direction of the Department, the contractor shall certify that the tax information processed and any output generated during the performance of duties under this Contract has been completely purged from all information storage components, including, but not limited to data center facility, laptops, computers, and other storage devices. If immediate purging of all information storage components is not possible, the contractor shall certify that any tax information remaining in any storage component shall be safeguarded to prevent unauthorized disclosures until it has been purged. Once all tax information processed and output generated has been completely purged, the contractor shall submit a signed certification to the Department to that effect.
- 10.1.2.1. To the extent Vendor is required to destroy Customer Data pursuant to this Section 10.1.2 (Destruction or Return of Customer Data) or any other part of this Agreement, Customer Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology ("NIST")-approved methods.
- 10.1.3. *Compelled Disclosures.* In the event that a subpoena or other legal process is served upon the contractor for records containing tax information, the contractor shall promptly notify the Department and cooperate with the Department and the IRS in any lawful effort to protect the tax information.
- 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, or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), the Governmental Entity shall not intentionally disclose

Vendor's Confidential Information to a Third Party (excluding the Governmental Entity's Authorized Contractors) without the prior written consent of Vendor.

10.2.2. *Destruction or Return of Vendor's Confidential Information.* Upon termination or expiration of this Agreement or an applicable Purchasing Instrument, the Governmental Entity shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items subject to any continuing licenses inuring to the benefit of the Governmental Entity hereunder or that are required for use of any Customer-Owned Deliverables or other Deliverables to which the Governmental Entity has a continued right to use).

10.2.3. *Compelled Disclosures.* Notwithstanding and in addition to the foregoing, the Governmental Entity 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 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

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

Prior to disclosing any of Vendor's Confidential Information as permitted above, the Governmental Entity shall provide reasonable notice to Vendor of the circumstances giving rise to such disclosure. Vendor agrees to indemnify and hold harmless the Governmental Entity and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs, and expenses of every kind and nature whatsoever (including the reasonable value of time of the Attorney General's Office and the costs, expenses, and attorney fees of other counsel retained by or on behalf of the Governmental Entity) arising out of, resulting from, or in any way related to any judgments or damages awarded against any of the foregoing entities or individuals in favor of a Third Party requesting any of Vendor's Confidential Information against the Governmental Entity or any such entities or individuals.

10.3. Open Records and Electronic Discovery Requests and Records Retention. Vendor will, upon the Governmental Entity's request and within any time period specified by the Governmental Entity, take all actions requested by the Governmental Entity to assist it in complying timely with any request for Customer Data or other data or information that may be made by any Third Party in accordance with applicable public or open records laws (including Iowa Code Chapter 22) or in connection with any subpoena, court order, discovery request, regulatory or criminal investigation or proceeding, or any other matter that may require the Governmental Entity to produce or provide Customer Data or other

data or information to a Third Party. Vendor will produce and provide all Customer Data or other data or information within the time period set forth in the Governmental Entity's request. Vendor will take all steps necessary to ensure Customer Data is stored and maintained in its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon the Governmental Entity's request, take all actions requested by the Governmental Entity to assist it in complying with any federal, state, or local record retention requirements, policies, procedures, or other similar requirements.

- 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 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 10 (Confidentiality) will constitute a material breach of this Agreement and be grounds for immediate termination of any applicable Purchasing Instrument, or in the Governmental Entity's case the Agreement, in the exclusive discretion of the non-breaching Party.
- 10.5. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 10 (Confidentiality) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.

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

- 11.1. **Data Protection.** Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data, Customer Property, and any related Deliverables. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:
- 11.1.1. Implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, theft, or modification of or to Customer Data, Customer Property, or any related Deliverables. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53 Revision 4 and ISO 27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard their own Confidential Information of like importance. In addition, such security measures, to the extent applicable, shall comply with, and shall enable the Governmental Entity to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, policies, or procedures ordinances, codes, regulations, and orders related to such security measures or other security, privacy, or safeguarding requirements, including applicable I.T. Governance Document(s).
- 11.1.2. All Customer Data shall be encrypted at rest and in transit with controlled access and any related Deliverables shall use TLS 1.2 or higher. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor,

Vendor Contractors, and Vendor Personnel are responsible for encryption of Customer Data in their possession. Additionally, Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless the Governmental Entity approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.

- 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 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 shall utilize a Follow-the-Sun model when providing technical user support on a 24/7 basis.

11.2. Additional Hosting Terms.

- 11.2.1. *Import and Export of Data.* The Governmental Entity or its Authorized Contractors shall have the ability to import or export data or information, including Customer Data, in whole or in part to or from the System(s) at no charge, and in such formats as may be acceptable to the Governmental Entity, without interference from Vendor. In the event the 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 that the 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 Governmental Entity in accordance with Section 10.1.2 (Destruction or Return of Customer Data).
- 11.2.3. *Compliance/Audits.*
 - 11.2.3.1. *Compliance.* Annually throughout the term, Vendor shall obtain and provide the Governmental Entity upon request, at its own cost, an independent, Third Party certificate of attestation certifying that the Application Services and System(s) complies with NIST 800-53 and IRS Publication 1075. This includes Federal Risk and Authorization Management Program (FedRAMP) certification for a System hosted in a cloud environment.
 - 11.2.3.2. In addition to the requirements in Section 11.2.3.1, Vendor may also, at its own cost, provide any of the following:
 - 11.2.3.2.1. An independent, Third Party certificate of audit certifying that the Application Services and System(s) complies with NIST 800-53, Revision 4 controls;

- 11.2.3.2.2. An ISO/IEC 27001:2005 certification;
 - 11.2.3.2.3. Test or assessment results of an independent, Third Party assessment of application scans using the Open Web Application Security Project (OWASP) Top Ten List;
 - 11.2.3.2.4. Test results of a penetration test of the System(s) conducted by an independent, Third Party;
 - 11.2.3.2.5. A copy of Vendor's annual SOC 2 type 2 report (for all Trust Services Principles); and
 - 11.2.3.2.6. A Vendor-produced remediation plan resulting from items 11.2.3.1.1 through 11.2.3.1.5, inclusive.
 - 11.2.3.2.7. Statement on Standards for Attestation Engagement (SSAE) 18 of Vendor's operations, information security program, and disaster recovery/business continuity plan
- 11.2.3.3. *Security Audit.* During the Term, the Governmental Entity or its Authorized Contractor(s) may perform security audits/scans of Vendor's environment, including unannounced penetration and security tests. The Governmental Entity's regulators (including any federal agencies providing funds used to pay for the Application Services, System(s), or Deliverables, in whole or in part, or which regulate the security or safeguarding of any Customer Data stored, Processed, or housed in the System(s)) 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 the Governmental Entity or its Authorized Contractors in a mutually agreeable format upon request. Such reports shall include, at minimum, latency statistics, user access summaries, user access IP address summaries, and user access history and security logs for all the Application Services, System(s), and related Deliverables.

11.3. Personnel Safeguards.

11.3.1. Background Checks.

- 11.3.1.1. *Floor.* Vendor shall conduct background checks in compliance with IRS Publication 1075 on all Vendor Personnel. Vendor shall provide the Governmental Entity with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.
- 11.3.1.2. If the criminal history check reveals a conviction, Vendor shall work with Governmental Entity to review the conviction and any additional information provided by the applicant. The existence of a conviction does not automatically disqualify an applicant or employee from performance on this performance or provision of Services or Deliverables under this Agreement. Decisions regarding assignment to this Agreement will be

determined on a case-by-case basis and consideration will include but not be limited to:

- 11.3.1.2.1. The nature of the conviction.
 - 11.3.1.2.2. The length of time between the offense and the employment decision.
 - 11.3.1.2.3. Number of offenses.
 - 11.3.1.2.4. Relatedness of the conviction to the duties and responsibilities of the position.
 - 11.3.1.2.5. Efforts at rehabilitation.
 - 11.3.1.2.6. Accuracy of the information that the applicant provided on the employment application.
- 11.3.2. Absent exigent circumstances, applicants and employees who have been convicted of crimes involving crimes of dishonesty, financial crimes, and crimes involving the misuse of confidential information shall be disqualified from designation as Vendor Personnel.
- 11.3.3. Deferred judgments shall be considered in all background investigations.
- 11.3.4. *Additional Screening.* The Governmental Entity reserves the right to subject Vendor Personnel to additional background checks at any time prior to or during any engagement. Such background checks may include a work history, financial review, request for criminal history data, or local or state criminal history check, national criminal history check through the Federal Bureau of Investigation ("FBI"), or other background check requirement imposed or permitted by law, rule, regulation, order, or policy. Vendor Personnel may be required to authorize the release of the results of criminal history checks, including those through the FBI, to one or more other Governmental Entities. Such background checks may be conducted by the Governmental Entity or its Authorized Contractors. The Governmental Entity may also require Vendor to conduct a work history or financial review of Vendor Personnel. Vendor shall provide the Governmental Entity with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.
- 11.3.5. Vendor shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor or the Governmental Entity or its Authorized Contractors.
- 11.3.6. *Right to Remove Individuals.* Should the Governmental Entity be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel, the Governmental Entity may request the replacement of such Vendor Personnel ("**Replacement Request**"). The Replacement Request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. If the Governmental Entity, in its sole discretion, determines Vendor Personnel pose a potential security risk and notifies Vendor of such security risk in its Replacement Request, Vendor shall immediately remove such individual; any replacement furnished by Vendor in connection with such a request may not perform or provide Services or

Deliverables to the Governmental Entity unless and until the Governmental Entity gives its consent to Vendor's use of such replacement.

- 11.3.7. *Security Awareness Training.* Vendor shall promote and maintain an awareness of the importance of securing, safeguarding, and otherwise appropriately handling Customer Property, including Customer Data, among Vendor Personnel, including but not limited to, Governmental Entity's annual security training.
- 11.3.8. *Separation of Job Duties.* Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Contractors and Vendor Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Property and Customer Data to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Services or Deliverables hereunder.
- 11.3.9. *Non-disclosure/Confidentiality Agreements.* Vendor Personnel are required to sign the Governmental Entity's standard confidentiality or non-disclosure agreement(s), or other confidentiality or non-disclosure agreement(s), including as may be required by applicable law, rule, regulation, or policy.

11.4. Security Breaches.

- 11.4.1. *Reporting.* Vendor or Vendor Contractors will report to the Governmental Entity within two (2) hours of Vendor's or Vendor Contractor's discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to the Governmental Entity within forty-eight (48) hours of discovery or notification of the actual or suspected Security Breach. Such written confirmation shall include an explanation of the nature of and circumstances surrounding such actual or suspected Security Breach.
- 11.4.2. *Investigations in Response to Actual or Suspected Breach.* Vendor and Vendor Contractors agree, at their sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the Governmental Entity in resolving and mitigating any damage from such actual or suspected Security Breach at Vendor's sole cost. At no additional cost to the Governmental Entity or the State of Iowa, Vendor and Vendor Contractor will fully cooperate with the Governmental Entity and its Authorized Contractors in investigating such actual or suspected Security Breach, including reviewing and assisting in reviewing system, application, and access logs, conducting and assisting in conducting forensic audits of relevant systems, imaging and assisting in imaging relevant media, and making personnel available for interview. On notice of any actual or suspected Security Breach, Vendor and Vendor Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. Vendor and Vendor Contractor will deliver to the Governmental Entity a root cause assessment and future incident mitigation plan and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. Vendor agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless the Governmental Entity specifically requests Vendor do so in writing.

11.4.3. *Additional Remedies in the Event of Actual Breach.* Upon the Governmental Entity's determination that a Security Breach involving or relating to Customer Data or related Deliverables has occurred, Vendor and Vendor Contractors shall fully cooperate with the Governmental Entity in fully rectifying and responding to such Security Breach. 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 of Iowa or the Governmental Entity) related to, arising out of, or incurred by or on behalf of the Governmental Entity as a result of, any Security Breach caused directly or indirectly, in whole or in part, by any act, error or omission, negligence, or misconduct of Vendor, Vendor Contractors, 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. The Governmental Entity shall determine, in its sole discretion, the content and means of delivery of any such notifications or reports. Vendor will reimburse or pay to the Governmental Entity all such expenses, fees, damages, and all other amounts within fifteen (15) business days of the date of any written demand or request delivered to Vendor.

11.4.4. For purposes of this Section, "**Security Breach**" means the unauthorized acquisition of or access to any information or data of or belonging to the Participating Governmental Entity or the State of Iowa by an unauthorized person that compromises the security, confidentiality, or integrity of such data or information including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. "**Security Breach**" shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.

11.4.5. Notwithstanding other requirements in this Agreement, if there is a breach of any "personal information" as that term is defined and governed by Iowa Code chapter 715C, that has been provided to Vendor or Vendor Contractor pursuant to this Agreement, Vendor understands and agrees that Vendor, not the Governmental Entity, shall be responsible for complying with any applicable provisions of Iowa Code chapter 715C, including but not limited to any applicable consumer notification requirements.

11.5. **Disaster Recovery and Business Continuity.**

11.5.1. *Creation, Maintenance, and Testing.* Vendor shall maintain a Business Continuity and Disaster Recovery Plan for related Deliverables ("**Plan**"), and implement such plan in the event of any unplanned interruption. Upon the Governmental Entity's

request, Vendor shall provide the Governmental Entity with a copy of Vendor's current Plan, revision history, and any reports or summaries relating to past testing of the Plan. Vendor shall actively test, review, and update the Plan on at least an annual basis using American Institute of Certified Public Accountants standards and other industry best practices as guidance. Vendor shall promptly provide the Governmental Entity with copies of all reports and summaries resulting from any testing of the Plan and with copies of any updates to the Plan. All updates shall be subject to the requirements of this Section 12.4 (Disaster Recovery/Business Continuity). Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard the Customer Data and the data processing capability and availability of the related Deliverables. Additional disaster recovery and business continuity requirements may be set forth in individual Purchasing Instruments.

- 11.5.2. *Activation of Plan.* Vendor shall immediately notify the Governmental Entity of any disaster or other event that results in the activation of the Plan. If Vendor fails to reinstate related Deliverables impacted by any such disaster within the periods of time set forth in the Plan, the Governmental Entity may, in addition to any other remedies available hereunder, immediately terminate this Agreement or applicable Purchasing Instrument as a non-curable default and without any penalty or liability. Without limiting Vendor's obligations under this Agreement, whenever a disaster causes Vendor to allocate limited resources between or among Vendor's customers, the Governmental Entity shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 13.26 (Force Majeure) shall not limit Vendor's obligations under this Section. Further, nothing in this shall be construed as in any way limiting Vendor's obligations elsewhere in this Agreement, including any applicable services levels and related remedies set forth in any Service-Level Agreement attached hereto as Special Terms and Conditions.
- 11.5.3. *Backup and Recovery.* Except as otherwise set forth in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and Conditions, Vendor is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within two (2) hours at any point in time. Additionally, unless otherwise provided in a Purchasing Instrument or Service Level Agreement attached hereto as Special Terms and Conditions, Vendor shall store a backup of Customer Data in an off-site "hardened" facility no less than daily, maintaining the security of Customer Data, consistent with the security requirements set forth in this Section. To the extent applicable in calculating the fees to be charged to the Governmental Entity under this Agreement, any backups of Customer Data shall not be considered in calculating storage used by the Governmental Entity.
- 11.5.4. *Loss of Data.* In the event of any Security Breach or any other event that compromises the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Vendor or Vendor Contractors related to the protection of the security, confidentiality, or integrity of Customer Data, Vendor shall, in addition to any other remedies available pursuant to this Agreement, or otherwise available at law or in equity, to the extent applicable: (a) notify the Governmental Entity as soon as practicable but no later than two (2) hours of becoming aware of such

occurrence; (b) send the Governmental Entity written confirmation within forty-eight (48) hours of discovery or notification of the occurrence; (c) cooperate with Governmental Entity in investigating the occurrence, including, but not limited to providing to the Governmental Entity and assisting the Governmental Entity in reviewing system, application, and access logs, conducting forensic audits of relevant systems, imaging relevant media, and making personnel available for interview; (d) indemnify and hold harmless the Governmental Entity and its employees, officers, board members, agents, representatives, and officials from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and expenses (including the reasonable value of time of the Iowa Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) directly or indirectly related to, resulting from, or arising out of such occurrence; (e) be responsible for recreating lost Customer Data in the manner and on the schedule specified by the Governmental Entity without charge; and, (g) provide to the Governmental Entity a detailed plan within ten (10) calendar days of the occurrence describing the measures Vendor will undertake to prevent a future occurrence.

- 11.5.5. Survives Termination. Vendor's duties, obligations, and liabilities as set forth in this Section 12 (Security/Privacy, Business Continuity, and Disaster Recovery) shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim or breach is made or discovered by the Governmental Entity or its Authorized Contractors.

12. General Provisions

- 12.1. Ancillary Agreements and Non-Disclosure Agreements. Vendor or Vendor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to the Governmental Entity in connection with this Agreement, including executing a Confidential Information Requirements for Vendors addendum as required by Pub 1075. Such Ancillary Agreements shall be attached as Special Terms and Conditions hereto and incorporated by reference as if fully set forth herein.
- 12.2. Immigration Status. Vendor and Vendor Contractors are responsible for ensuring Vendor Personnel possess and maintain valid Visas for any Vendor Personnel for whom a Visa is required. As outlined in section 12.2.1, the Governmental Entity requires Vendor or Vendor Contractors to conduct E-Verify employment-eligibility verifications of Vendor Personnel performing or providing Services or Deliverables hereunder, including any Vendor Personnel who may have access to Customer Property or Customer Data. Vendor shall be responsible for all costs associated with the E-Verify process and shall provide the Governmental Entity with the results of this process in a mutually agreeable form and manner at the time or in intervals as mutually agreed to by the Parties.
- 12.3. No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor, Vendor Contractors, and Vendor Personnel shall not make any media release or other public announcement relating to or referring to this Agreement, a Purchasing Instrument, or the Services or Deliverables provided hereunder without the Governmental Entity's prior written consent. Vendor, Vendor Contractors, and

Vendor Personnel shall acquire no right to use, and shall not use, without the Governmental Entity's written consent, the terms or existence of this Agreement, Purchasing Instrument, or the fact of providing Services or Deliverables to the Governmental Entity hereunder or the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the State of Iowa, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; (b) to express or to imply any endorsement of Vendor or Vendor's Services or Deliverables by the State of Iowa; or (c) in any manner other than expressly in accordance with this Agreement.

12.4. Independent Contractor. Vendor is an independent contractor performing services for the Governmental Entity.

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

- 12.4.7. Vendor and Vendor Contractors shall be free to hire employees as is necessary for their business purposes; provided, that such employees providing or provisioning Services or Deliverables hereunder shall satisfy the terms and conditions of this Agreement and any Purchasing Instrument(s) executed hereunder. The Parties acknowledge and agree that the Governmental Entity will not have the authority to hire, fire, supervise, control, or manage any Vendor Personnel.
- 12.4.8. Vendor Personnel shall not receive performance reviews, vocational training, or business cards from the Governmental Entity; shall clearly state in any and all communications related to the performance or provisioning of Services or Deliverables hereunder that they are employees of Vendor or Vendor Contractor, as opposed to employees of the Governmental Entity; and shall not be subject to the Governmental Entity's standard disciplinary practices and procedures.
- 12.5. Amendments. This Agreement may be amended, modified, or replaced from time to time by mutual consent of the Governmental Entity and Vendor. All amendments to this Agreement must be executed by both Parties in writing.
- 12.6. No Third Party Beneficiaries. Except as otherwise expressly stated herein, there are no Third Party beneficiaries to this Agreement. This Agreement is intended only to benefit the Governmental Entity and Vendor and their respective successors and permitted assigns and the individuals whose Personal Data is stored, transmitted, or otherwise Processed by the related Deliverables.
- 12.7. Choice of Law/Forum. Notwithstanding anything in the NASPO Contract or any Related Agreement to the contrary, this purchase shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this purchase, including after expiration or termination of the same, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of the NASPO Contract or any Related Agreements shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise.
- 12.8. Assignment and Delegation. This Agreement may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that the Governmental Entity may assign, transfer, or convey this Agreement, in whole or in part, to any Governmental Entity that succeeds its duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Governmental Entity. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale, or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the Governmental Entity with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale, or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any

affiliate thereof without the prior written consent of the Governmental Entity. Vendor further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Vendor under this Agreement.

- 12.9. Use of Third Parties. No subcontract or other delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Supplemental, the NASPO Contract, or any Related Agreements. Vendor shall remain solely responsible its performance under this Supplemental, the NASPO Contract, or any Related Agreements and for compliance with the terms, conditions, and requirements set forth in the same. Vendor shall be fully responsible and liable for all acts or omissions of any subcontractors, affiliates, subsidiaries, or any other third party, and any employees, agents, independent contractors, or any other staff or personnel of any of the foregoing ("**Vendor Agents**") acting on behalf of or at the direction of Vendor. Any action of a Vendor Agent, which, if done by Vendor, would constitute a breach of this Supplemental, the NASPO Contract, or any Related Agreements, shall be deemed a breach by Vendor and have the same legal effect. Vendor is solely liable for any and all payments that may be due to Vendor Agents pursuant to any subcontract or otherwise. Vendor shall indemnify and hold harmless the State, OCIO, and the Participating Governmental Entity and their officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Vendor's breach of any subcontract or contract into which it enters, including Vendor's failure to pay any and all amounts due to any Vendor Agents. All subcontracts shall contain provisions which allow the Participating Governmental Entity or its designee to access the subcontractor's books, documents, and records and for inspections of work.
- 12.10. Integration. This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included in this Agreement. Thus, the Governmental Entity shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "browser-wrap" agreement, or "sneakwrap" agreement, or any other similar agreement that may accompany, relate to, or be embedded in any Deliverable(s). Vendor acknowledges that it has thoroughly read this Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents that are executed or may be executed hereunder and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept the same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Governmental Entity on the basis of draftsmanship or preparation thereof.
- 12.11. Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Governmental Entity and Vendor for the Services or Deliverables provided in connection with this Agreement.
- 12.12. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Governmental Entity and Vendor, failure by the Governmental Entity or Vendor at any time to require performance by the other Party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the Parties hereto.

- 12.13. Notices. Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice as identified on the CD&E, or on the applicable Purchasing Instrument, as applicable, at the address of the Party to receive notice. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS.
- 12.14. Cumulative Rights. The various rights, powers, options, elections, and remedies of the Governmental Entity provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies, or priorities allowed by law, and shall in no way affect or impair the right of the Governmental Entity to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by the Governmental Entity of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 12.15. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- 12.16. Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all Vendor Personnel providing Services and Deliverables hereunder are responsive to the Governmental Entity's requirements and requests in all respects, including in accordance with any specific timelines identified in a duly executed Purchasing Instrument.
- 12.17. Authorization. Vendor represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Vendor, enforceable in accordance with its terms.
- 12.18. Successors in Interest. All terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, and legal representatives.
- 12.19. Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Supplemental, the NASPO Contract, or any Related Agreements, including records that document all fees and other amounts charged during the term of this Supplemental, the NASPO Contract, or any Related Agreements, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of the same, or the completion of any required audit. Vendor shall permit the Participating Governmental Entity or its designee, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under the PO, this Supplemental, the NASPO Contract, or any Related Agreements. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records.

- 12.20. Headings or Captions and Terms. The section headings or captions set forth in this Agreement are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation" or "but not limited to." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 12.21. Multiple Counterparts and Electronic Signatures. This Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents that are executed or may be executed hereunder, including any amendments to any of the foregoing, may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each such document(s) shall constitute an original. Signatures on such documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures, with such scanned and electronic signatures having the same legal effect as original signatures. Such documents may be accepted, executed, or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("**E-Sign Act**"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act, codified at Iowa Code chapter 554D ("**UETA**"), or any other applicable state law, rule, policy, standard, directive, or order. Any document accepted, executed, or agreed to in conformity with such laws, rules, policies, standards, directives, or orders will be binding on the signing Party as if it were physically executed. Vendor acknowledges and agrees it will not contest the validity or enforceability of any such document(s), including under any applicable statute of frauds, because they were accepted, signed, or transmitted in electronic form. Vendor further acknowledges and agrees that it will not contest the validity or enforceability of a signed scanned or facsimile copy of any such document(s) on the basis that it lacks an original handwritten signature, or on the basis that the Parties were not signatories to the same counterpart.
- 12.22. Not a Joint Venture. Nothing in this Supplemental, the NASPO Contract, or any Related Agreements shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party.
- 12.23. Attachments. The Parties agree that if an Addendum, Attachment, Rider, Schedule, Appendix, or Exhibit is attached hereto by the Parties, and referred to herein, then the same shall be deemed incorporated herein by reference as if fully set forth herein.
- 12.24. Further Assurances and Corrective Instruments. The Parties agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.
- 12.25. Obligations of Joint Entities. If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall

be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default of such activities and obligations.

- 12.26. Force Majeure. Neither Party shall be in default under this Agreement if performance is prevented, delayed, or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties. "Force majeure" does not include: financial difficulties of Vendor or Vendor Contractors; claims or court orders that restrict Vendor's or Vendor Contractor's ability to perform or deliver the Services or Deliverables, contemplated by this Agreement; strikes; labor unrest; supply chain disruptions; internet failure; power failures; hacker attacks; denial of service attacks; virus or other malicious software attacks or infections; or Security Breach. If delay results from a Vendor Contractor's conduct, negligence, or failure to perform, Vendor shall not be excused from compliance with the terms and obligations of Vendor unless the Vendor Contractor is prevented from timely performance by a "force majeure" as defined in this Agreement. If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Governmental Entity. The Party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other Party of the occurrence and reason for the delay. The Parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which Vendor's performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.
- 12.27. Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.
- 12.28. Right of Inspection/Contract Compliance. Vendor shall allow the Governmental Entity making purchases or its designee to inspect Vendor's books and records at reasonable times in order to monitor and evaluate performance of this Agreement. All subcontracts shall contain provisions which allow the same. In addition, Vendor agrees that the Governmental Entity or its designee may conduct a complete contract compliance audit at least once annually during the Term of this Agreement and after termination or expiration of this Agreement to determine whether or not Vendor is complying with the terms of this Agreement and all related Special Terms and Conditions, Ancillary Agreements, Purchasing Instruments, schedules, exhibits, and other like documents. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations requested by the Governmental Entity or its designee. Vendor shall not impose any charge or fee in connection with any contract compliance audit.
- 12.29. Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Governmental Entity is exempt from the payment of Governmental Entity sales and other taxes:

https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf.

- 12.30. Title to Property. Title to all property, including Customer Property, furnished by the Governmental Entity to Vendor to facilitate the performance of this Agreement and any Customer-Owned Deliverables shall remain the sole property of the Governmental Entity or applicable Third Party owning Customer Property that has been licensed to the Governmental Entity. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Governmental Entity upon the earliest of completion, termination, or cancellation of this Agreement or the applicable Purchasing Instrument, or at the Governmental Entity's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided for in this Agreement, Vendor shall not disclose or use such property for any of the following purposes, including pledging or encumbering it; selling or using it for monetary gain; using it to compile mailing lists; solicit business; or pursue other business activities. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Governmental Entity under this Agreement, or for Customer Property or Customer-Owned Deliverables purchased and paid for by the Governmental Entity under this Agreement, shall pass to and vest in the Governmental Entity.
- 12.31. Exclusivity. This Agreement is not exclusive. The Governmental Entity may obtain similar or identical Services or Deliverables from other vendors.
- 12.32. Award of Related Agreements. The Governmental Entity may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with Authorized Contractors who may be engaged by the Governmental Entity in connection with this Agreement, including complying with any license terms, conditions, or restrictions imposed by such Authorized Contractors in connection with any systems, software, or other intellectual property owned by or licensed by or through such Authorized Contractors and to which Vendor, Vendor Contractors, or Vendor Personnel must use or access or with which the related Deliverables must interface, integrate, or connect. Any reference herein to the Governmental Entity's designee or other like reference shall be deemed to include its Authorized Contractors. Vendor will ensure that any Vendor Contractors or Vendor Personnel will abide by this provision.
- 12.33. Sovereign Immunity. The Governmental Entity, on its own behalf or on behalf of any of its officers, directors, employees, officials, and agents, does not waive sovereign immunity or any other immunity available to it by entering into this Agreement and specifically retains and reserves the defense of sovereign immunity or any other immunity and all defenses available under Governmental Entity and federal laws, rules, and regulations for any claim arising out of or related to this Agreement.
- 12.34. Attorney's Fees and Expenses. In the event Vendor defaults on any of its obligations under this Agreement, Vendor shall pay to the Governmental Entity all costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses, and attorney fees of other counsel retained by or on behalf of the Governmental Entity) incurred by the Governmental Entity in enforcing this Agreement or any of its rights and remedies with respect thereto.
- 12.35. Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, and intellectual property, including Customer Property, furnished by the

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Governmental Entity for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the Governmental Entity's request, restore damaged property to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Governmental Entity. In addition, at the Governmental Entity's request, Vendor will reimburse the Governmental Entity for any loss or damage to such property caused by Vendor, Vendor Contractors, or Vendor Personnel. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property, and intellectual property rights of the Governmental Entity or State of Iowa.

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

Exhibit A. Iowa Department of Human Services Supplemental Terms.

The following terms supplement and are made part of the Contract (hereinafter, the "Underlying Agreement") between the Iowa Department of Human Services (the "Agency") and the Contractor.

1. All references to liquidated damages within the NASPO Contract are hereby deleted.
2. All references to Appendix D and Letter of Credit within the NASPO Contract are hereby deleted.
3. RFP Attachment G – Pricing Schedules. Schedules A (Cost Summary), B (DDI Payment Milestones), C (Cost of Operations) and D (Enhancement Pool Hours) may be modified as specified within a Purchasing Instrument.
4. RFP Appendix B – Performance Standards may be modified as specified within a Purchasing Instrument.
5. Business Associate Agreement, applicable when identified, in writing, within a Purchasing Instrument. If the Contractor acts as the Agency's Business Associate and performs certain services on behalf of or for the Agency pursuant to this Contract that involves information that is protected by the Health Insurance Portability and Accountability Act of 1996, as amended, and the federal regulations published at 45 C.F.R. part 160 and 164, then the Contractor is the Agency's Business Associate. By signing this Contract, the Business Associate certifies it will comply with the Business Associate Agreement Addendum ("BAA"), and any amendments thereof, as posted to the Agency's website: <https://hhs.iowa.gov/hipaa/baa>. This BAA, and any amendments thereof, is incorporated into the Contract by reference.

By signing this Contract, the Business Associate consents to receive notice of future amendments to the BAA through electronic mail. The Business Associate shall file and maintain a current electronic mail address with the Agency for this purpose. Notwithstanding anything to the contrary in the Contract, the Agency may amend the BAA by posting an updated version of the BAA on the Agency's website at: <http://hhs.iowa.gov/HIPAA/baa> and providing the Business Associate electronic notice of the amended BAA. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the Agency of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days of the Agency's notice referenced herein. Any agreed alteration of the then current Agency BAA shall have no force or effect until the agreed alteration is reduced to a Contract amendment that must be signed by the Business Associate, Agency Director, and the Agency Security and Privacy Officer. If there is a conflict between the BAA and provisions in Section 2.8, Ownership and Security of Agency Information, the provisions in the BAA shall control.

6. Qualified Service Organization, applicable when identified, in writing, within a Purchasing Instrument. If the Contractor is or will be receiving, storing, processing, or otherwise dealing with confidential patient records from programs covered by 42 C.F.R. part 2, the Contractor is a Qualified Service Organization and the Contractor acknowledges that it is fully bound by those regulations. The Contractor will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by 42 C.F.R. part 2. "Qualified Service Organization" as used in this Contract has the same meaning as the definition set forth in 42 C.F.R. § 2.11.
7. Certification Regarding Iowa Code Chapter 8F, applicable when identified, in writing, within a Purchasing Instrument. If the Contractor is or becomes subject to Iowa Code chapter 8F during the term of this Contract, which includes any extensions or renewals thereof, the Contractor shall comply with the following:
 - 7.1. As a condition of entering into this Contract, the Contractor shall certify that it has the information required by Iowa Code § 8F.3 available for inspection by the Agency and the Legislative Services

Agency.

- 7.2. The Contractor agrees that it will provide the information described in this section to the Agency or the Legislative Services Agency upon request. The Contractor shall not impose a charge for making information available for inspection or providing information to the Agency or the Legislative Services Agency.
- 7.3. Pursuant to Iowa Code § 8F.4, the Contractor shall file an annual report with the Agency and the Legislative Services Agency within ten (10) months following the end of the Contractor's fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:
 - 7.3.1. Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to this Contract. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.
 - 7.3.2. Financial information relating to all service contracts with the Agency during the preceding year, including the costs by category to provide the contracted services.
 - 7.3.3. Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of the Contractor covering the preceding year.
 - 7.3.4. Corrective action taken or planned by the Contractor in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.
 - 7.3.5. Any changes in the information submitted in accordance with Iowa Code § 8F.3
 - 7.3.6. A certification signed by an officer and director, two directors, or the sole proprietor of the Contractor, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of Iowa Code chapter 8F.
 - 7.3.7. In addition, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Agency.
8. Data and Security. If this Contract involves Confidential Information, the following terms apply:
 - 8.1.1. Data and Security System Framework. The Contractor shall comply with either of the following:
 - Provide certification of compliance with a minimum of one of the following security frameworks, if the Contractor is storing Confidential Information electronically: NIST SP 800-53, HITRUST version 9, SOC 2, COBIT 5, CSA STAR Level 2 or greater, ISO 27001 or PCI-DSS version 3.2 prior to implementation of the system and again when the certification(s) expire, or
 - Provide attestation of a passed information security risk assessment, passed network penetration scans, and passed web application scans (when applicable) prior to implementation of the system and again annually thereafter. For purposes of this section, "passed" means no unresolved high or critical findings.
 - 8.1.2. Vendor Security Questionnaire. If not previously provided to the Agency through a procurement process specifically related to this Contract, the Contractor shall provide a fully completed copy of the Agency's Vendor Security Questionnaire (VSQ).
 - 8.1.3. Cloud Services. If using cloud services to store Agency Information, the Contractor shall comply with either of the following:
 - Provide written designation of FedRAMP authorization with impact level moderate prior to implementation of the system, or
 - Provide certification of compliance with a minimum of one of the following security frameworks: HITRUST version 9, SOC 2, COBIT 5, CSA STAR Level 2 or greater

or PCI-DSS version 3.2 prior to implementation of the system and again when the certification(s) expire.

8.1.4. Addressing Concerns. The Contractor shall timely resolve any outstanding concerns identified by the Agency regarding the Contractor's submissions required in this section.

9. Contract Work Hours and Safety Standards Act. The Contractor shall comply with the following contract provisions and related matters.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b) (1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by [29 CFR] § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b) (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or

subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Agency and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Exhibit B. Resource Card

Schedule E - Resource Hourly Rates		
Type of resource	Phases	
	DDI and Certification	Operations
Project/Engagement Manager	\$122	\$125
Contract Manager	\$109	\$113
Integration Lead	\$122	\$125
Security Lead	\$169	\$180
Security Analyst	\$136	\$144
Architecture Lead	\$142	\$146
System Architect	\$160	\$170
Sr. System Architect	\$169	\$180
Configuration Lead	\$145	\$154
Configuration Specialist	\$101	\$104
Sr. Configuration Specialist	\$113	\$117
Infrastructure Lead	\$145	\$154
Infrastructure Analyst	\$101	\$104
Developer	\$89	\$92
Sr. Developer	\$121	\$129
Database Lead	\$155	\$165
Database Administrator	\$118	\$121
Database Analyst	\$101	\$104
Sr. Database Administrator	\$169	\$180
Testing Lead	\$122	\$125
Tester	\$97	\$100
Technical Writer	\$121	\$129
Sr. Data Scientist	\$232	\$247
Data Scientist	\$218	\$231
System Analyst	\$121	\$129
Sr. System Analyst	\$145	\$154
Business Analyst	\$97	\$100
Sr. Business Analyst	\$122	\$125
Training Lead	\$122	\$125
Trainer	\$109	\$113
Business Operations Manager	\$122	\$125

This schedule represents the hourly rates for resources in both the DDI and Certification phases and Operations phases

