

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

<b>Title of Contract:</b> State of Iowa and CSDC Master Software, Services, and Equipment Agreement		<b>Contract Number:</b> 2019BUS228
<b>State Agency’s Name:</b> Iowa Office of Chief Information Officer (“OCIO”)		
<b>Vendor’s Name:</b> CSDC Inc.		
<b>Contract to Begin:</b> Date of Last Signature on the CD&E below.	<b>Date of Expiration:</b> February 28, 2020	<b>Annual Extensions:</b> Nine (9) Annual One Year Renewals
<p><b><u>Documents Incorporated/Order of Precedence.</u></b> The attached agreement numbered Contract Number <b>2019BUS228 (“Agreement”)</b> and corresponding attachments, incorporated by reference as if set forth therein, and any other documents incorporated by reference into the Agreement, together comprise the terms and conditions governing the relationship between the Parties.</p> <ol style="list-style-type: none"> <li>1. <b>The State of Iowa and CSDC Master Software, Services, and Equipment Agreement</b> <ol style="list-style-type: none"> <li>a. <b>The General Terms and Conditions</b></li> <li>b. <b>Attachment A:</b> Pricelist to GSA Schedule No. GS-35F-0069U;</li> <li>c. <b>Attachment(s) B:</b> Special Terms and Conditions--Licensing Addendum;</li> <li>d. <b>Attachment C:</b> Special Terms and Conditions--Insurance;</li> <li>e. <b>Attachment(s) D:</b> Special Terms and Conditions--Ancillary Agreements addressing compliance concerns of individual Governmental Entities.</li> </ol> </li> </ol> <p>In the case of any conflict or inconsistency between the provisions of the foregoing documents, any inconsistency or conflict shall be resolved as follows:</p> <ol style="list-style-type: none"> <li>1. First by giving preference to any Special Terms and Conditions addressing compliance concerns of individual Governmental Entities making purchases hereunder;</li> <li>2. Second, by giving preference to the terms of the General Terms and Conditions;</li> <li>3. Third, except as otherwise provided in the Agreement, by giving preference to the specific provisions of any Special Terms and Conditions;</li> <li>4. Fourth, by giving preference to the specific provisions of any Purchasing Instrument;</li> <li>5. Fifth, by giving preference to the specific provisions of any other schedules, exhibits or other attachments;</li> <li>6. Sixth, by giving preference to the specific provisions of any applicable RFP; and</li> </ol>		

7. Seventh, by giving preference to the specific provisions of any applicable Proposal (excluding any Vendor Exceptions that are not expressly made a part of the Agreement).

**Notes:**

- This Agreement does not guarantee any minimum level of purchases, usage, or compensation;
- This Agreement is available to any Governmental Entity of the State of Iowa, including State Agencies and political subdivisions;
- Absent a separate, lawful procurement basis, only the Deliverables listed in Attachment A (Pricelist to GSA Schedule No. GS-35F-0069U) may be procured hereunder;
- Pursuant to Section 12.1 (Ancillary Agreements and Non-Disclosure Agreements), Governmental Entities making purchases hereunder may require Vendor, Vendor Contractors, or Vendor Personnel to execute “**Ancillary Agreements**” to address any compliance, legal, confidentiality, or privacy concerns that may be unique to an applicable Governmental Entity making purchases hereunder, such as a Business Associate Agreement (“**BAA**”), contract language for technology services under IRS Publication 1075, or Criminal Justice Information System (“**CJIS**”) Security Addendum, or any other non-disclosure or confidentiality agreements in connection with this Agreement or any related agreement deemed necessary by the applicable Governmental Entity.

**Signature Block Next Page**

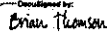
**IN WITNESS WHEREOF, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties have entered into this Agreement and have caused their duly authorized representatives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

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**Vendor: CSDC Inc.**

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**By (Authorized Signature)**

Digitized by  
  
DocuSign

**Date Signed**  
2/28/2019

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**Printed Name and Title of Person Signing**

**Brian Thomson, Chief Financial Officer**

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**Address**

**804 Las Cimas Parkway, Suite 100, Austin, Texas 78746**

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

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**By (Authorized Signature)**



**Date Signed**

2/28/2019

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**Printed Name and Title of Person Signing**

**Jeff Franklin, Chief Information Officer**

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**Address**

**Iowa Office of the Chief Information Officer**

**Hoover Bldg. – Level B**

**1305 E Walnut St.**

**Des Moines, IA 50319**

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## State of Iowa and CSDC Master Software, Services, and Equipment Agreement

### General Terms and Conditions

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

#### 1. Overview.

- 1.1. Purpose/Availability. This Agreement establishes the terms and conditions pursuant to which Governmental Entities located in the State of Iowa may procure Deliverables identified in the attached GSA Schedule from Vendor, or for which there exists a separate, lawful procurement basis. This Agreement only permits such purchasing and does not obligate any Governmental Entity to acquire any Deliverables provided by Vendor hereunder. This Agreement does not guarantee any minimum level of purchases, usage, or compensation.
- 1.2. Authority. OCIO enters this Agreement pursuant to Iowa Code 8B.24(5)(b)(2) (2017). This authority authorizes OCIO to enter into agreements for the purchase of Information Technology where the contract price, terms, and conditions are no less favorable than Vendor’s current federal supply contract price, terms, and conditions. Applicable to and specifically for purposes of this Agreement, the underlying federal supply contract forming the basis of this procurement at the time of the execution of this Agreement is GSA Schedule No. GS-35F-0069U which shall include any successor schedule or pricelist related thereto for purposes of this Agreement (“**GSA Schedule**” or “**GSA Price List**”).
- 1.3. Term. The initial term of this Agreement shall be as stated on the CD&E, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, OCIO shall have the option to extend/renew this Agreement for up to nine (9) additional one-year renewal terms. The decision to extend the Agreement will be at the sole option of OCIO and may be exercised by OCIO by providing written notice to Vendor. Notwithstanding the foregoing, the term of this Agreement shall not exceed the term of the underlying federal supply contract forming the basis of this Agreement.
- 1.4. Relationship between this Agreement and Individual Purchasing Instruments. Each Purchasing Instrument executed hereunder shall be deemed, upon its execution, to incorporate the terms and conditions of this Agreement and shall constitute a separate, distinct, and independent agreement between Vendor and the applicable Governmental Entity. To the extent a Governmental Entity other than OCIO makes a purchase hereunder pursuant to a Purchasing Instrument executed by it, such Governmental Entity shall be solely responsible for any payments due and duties and obligations owed Vendor under this Agreement. In addition, notwithstanding any other provision of this Agreement to the contrary, OCIO bears no obligation or liability for any other Governmental Entity’s losses, liabilities, or obligations, including Vendor’s failure to perform, arising out of or

relating in any way to this Agreement. Likewise, the State of Iowa generally bears no obligation or liability for any political subdivision or other non-State entity's losses, liabilities, or obligations, including Vendor's failure to perform, arising out of or relating in any way to this Agreement.

2. **Definitions.** In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:
- 2.1. **“Acceptance”** means the applicable Governmental Entity has determined a portion of Deliverables provided under a Purchasing Instrument satisfy the Governmental Entity's Acceptance Tests. **“Final Acceptance”** means the applicable Governmental Entity has determined all Deliverables provided under a Purchasing Instrument satisfy the Governmental Entity's Acceptance Tests. **“Non-acceptance”** means the applicable Governmental Entity has determined that a portion of Deliverables provided under a Purchasing Instrument have not satisfied the Governmental Entity's Acceptance Tests.
  - 2.2. **“Acceptance Criteria”** means the Specifications, goals, performance measures, testing results and/or other criteria designated by the applicable Governmental Entity and agreed to by Vendor in writing, and against which Acceptance Tests are conducted. Acceptance Criteria may include any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, to the extent applicable any RFP and 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 applicable Governmental Entity to determine whether Deliverables meet Acceptance Criteria or otherwise satisfy the applicable Governmental Entity, as determined by the applicable Governmental Entity in its sole and reasonable discretion. Acceptance Testing may include testing of individual or multiple units, modules or components, system or integration testing, user-acceptance testing, load/stress testing, system security testing, network testing, recovery/backup testing, data transfer, migration and conversion testing, and Documentation review.
  - 2.4. **“Agreement,”** unless the context requires otherwise, means the collective documentation memorializing the terms of the agreement identified on the Contract Declarations & Execution Page(s) and all other attachments to the Contract Declarations & Execution Page(s).
  - 2.5. **“Authorized Contractors”** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by a Governmental Entity to use, maintain, support, modify, enhance, host, or otherwise assist such Governmental Entity with any Deliverables provided hereunder. For the avoidance of doubt, the rights of a Governmental Entity's Authorized Contractor with respect to the Deliverables provided by Vendor hereunder are limited to those granted to the applicable Governmental Entity.
  - 2.6. **“Confidential Information”** means, subject to any applicable federal, State, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party (**“Disclosing Party”**) to the other Party (**“Receiving Party”**) that, at the time of disclosure, is designated as confidential (or

like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

- 2.7. **“Customer Data”** means all information, data, materials, or documents (including Confidential Information of or belonging to the applicable Governmental Entity) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from a Governmental Entity making purchases hereunder, its end users, or its Authorized Contractors related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed or used by Vendor in connection with any Deliverables provided hereunder and all originals and copies of any the foregoing; provided that “Customer Data” does not include the Software, Source Code, or any other Confidential Information of Vendor, any Vendor Contractor, or any Vendor Personnel.
- 2.8. **“Customer Property”** means any property of or belonging to a Governmental Entity making purchases hereunder, including Customer Data and Customer-Owned Deliverables, software, hardware, programs or other property possessed, owned, or maintained by a Governmental Entity.
- 2.9. **“Customer-Owned Deliverables”** means any Deliverables specifically developed by Vendor at the direction of the Governmental Entity, including all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. For purposes of this definition, unless otherwise agreed to by the Parties, Customer-Owned Deliverables shall not include Source Code to the Amanda Platform.
- 2.10. **“Deficiency”** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related to a Deliverable, including any failure of a Deliverable to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.
- 2.11. **“Deliverables”** means all of the goods, Services, Software, Equipment, work, work product, items, materials, and property to be created, developed, produced, delivered,

performed or provided by or on behalf of, or made available through, Vendor pursuant to a Purchasing Instrument hereunder.

- 2.12. **“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media. For the avoidance of doubt, “Documentation” does not include any Vendor Source Code or Source Material.
- 2.13. **“End User License Agreement(s)” or “EULA(s)” or “Terms of Service” or “TOS”** means Vendor Contractor's standard contract documents governing a Governmental Entity’s access to, use of, or deployment of certain Deliverables, including Software, Vendor supplies hereunder, directly or indirectly, and that a Governmental Entity may be required to execute in connection with its use of the same. Governmental Entities may negotiate EULAs or TOSs with the applicable Vendor Contractor. To the extent requested by the applicable Governmental Entity or as otherwise agreed to by the Parties in writing, Vendor shall communicate to applicable Vendor Contractors, in accordance with License Agreement Addendum, on the applicable Governmental Entity’s behalf that such EULAs or TOSs shall be subject to, at a minimum, the applicable Customer EULA Terms or Customer TOS Terms, which for the State of Iowa are attached hereto as Special Terms and Conditions, or other specific terms and conditions as supplied by the applicable Governmental Entity.
- 2.14. **“Enhancements”** means general release functional enhancements to the Software that CSDC includes as part of its standard Software license offering without additional charge.
- 2.15. **“Equipment”** means any equipment or hardware to be provided by Vendor, directly or indirectly, under this Agreement.
- 2.16. **“Governmental Entity”** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section; excluding any reference to ‘any unit of another state government, including its political subdivisions; any unit of the United States government’ provided therein. The term Governmental Entity includes Participating Agencies, agencies, independent agencies, the Judicial Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government. For the avoidance of doubt, “Governmental Entity” as used herein means any of the foregoing governmental entities of the State of Iowa.
- 2.17. **“I.T. Governance Document(s)” or “Governance Document(s)”** means any Information Technology policies, standards, processes, guidelines, or procedures developed by OCIO pursuant to Iowa Code section 8B, *available at: <https://ocio.iowa.gov/>* (navigate to policies, standards, rules, respectively), and which are generally applicable to Participating Agencies, absent a waiver granted pursuant to Iowa Code section 8B.21(5) and corresponding implementing rules.

- 2.18. **“Old Contract”** means the State’s legacy contract for E-Licensing System Amanda, Contract Number 3544-13A by and between the State of Iowa, acting by and through the Iowa Department of Administrative Services (**“DAS”**), and Vendor, *available at: <https://bidopportunities.iowa.gov/Home/ContractInfo?contractId=be62bc49-ec25-e711-80f5-005056b4593f>*. The Old Contract was the result of the State of Iowa’s Request for Proposal # 1108588219 and Vendor’s corresponding Proposal dated August 28, 2008.
- 2.19. **“Participating Agency”** shall have the same meaning ascribed it under Iowa Code section 8B, including any subsequent amendments or successor provisions thereto, and which at the time of execution of this Agreement meant any state agency, except the state board of regents and institutions operated under the authority of the state board of regents.
- 2.20. **“Price Reduction(s)”** or **“Reduced Price(s)”** means any time during the term of this Agreement, including all extensions or renewals, Vendor’s prices decrease/are reduced under the GSA Schedule as between Vendor and the federal government.
- 2.21. **“Proposal”** means, to the extent applicable to the particular, individual transaction(s):
- 2.21.1. Any bid or response to any request for proposal or other solicitation issued in connection with the underlying federal supply contract forming the basis of this Agreement; and
- 2.21.2. As it relates specifically to the “Amanda Platform” and any individual instances utilized by an applicable Governmental Entity of or related thereto, Vendor’s Response to that RFP dated August 28, 2008.
- 2.22. **“Purchasing Instrument”** means documentation issued by a Governmental Entity to Vendor for the purchase of Deliverables under this Agreement, including a **“Purchase Order”** or **“Statement of Work,”** and that identifies the Deliverables to be purchased and any other requirements deemed necessary by the applicable Governmental Entity, including any corresponding compensation and delivery dates. Each Purchasing Instrument is incorporated into this Agreement as if fully set forth herein upon execution. Notwithstanding the foregoing, any terms and conditions included on Vendor’s standard forms or invoices shall be null and void.
- 2.23. **“Request for Proposal”** or **“RFP”** means, to the extent applicable to the particular, individual transaction(s):
- 2.23.1. Any request of proposal or other solicitation issued in connection with the underlying federal supply contract forming the basis of this Agreement; and
- 2.23.2. As it relates specifically to the “Amanda Platform” and any individual instances utilized by an applicable Governmental Entity of or related thereto, the State of Iowa’s Request for Proposal # 1108588219.
- 2.24. **“Security Breach”** means the unauthorized acquisition of or access to Customer Data by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, including instances in which internal personnel access systems in excess of their user rights 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.

- 2.25. **“Services”** means:
- 2.25.1. Any **“Maintenance and Support Services”** available on the GSA Schedule;
  - 2.25.2. Any **“Training Services”** available on the GSA Schedule;
  - 2.25.3. Any **“Information Technology Professional Services”** available on the GSA Schedule;
  - 2.25.4. Any other Services available on the GSA Schedule, or for which there exists a separate, lawful procurement basis.
- 2.26. **“Software”** means all programs, applications, modules, embedded software, and components provided by Vendor hereunder, or in a Purchasing Instrument, including but not limited to the AMANDA Platform and any Updates and Enhancements thereto. For the avoidance of doubt, “Software” does not include any Third Party Software.
- 2.27. **“Source Code”** means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. For purposes of this definition, configurations of the Software are not considered Source Code.
- 2.28. **“Source Material”** means, with respect to any Software or System provided by Vendor or Vendor Contractors hereunder, directly or indirectly, the Source Code of such Software or System 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 or System.
- 2.29. **“Special Terms and Conditions”** means any attachment hereto entitled, in whole or in part, **“Special Terms and Conditions.”**
- 2.30. **“Specifications”** mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to Deliverables stated or expressed in this Agreement, Special Terms and Conditions, a Purchasing Instrument, to the extent applicable any RFP and Proposal, and the Documentation. Specifications shall include standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. Specifications shall include, without limitation, the existing and planned data model for any System procured hereunder, including all data elements, logical relationships and an entity relationship diagram, the functional requirements specifications and a functional design for any such System, including descriptions of each System function and a functional hierarchy diagram, a definition of the existing and planned System modules, including a diagram showing the system design, interface

design document including descriptions of all internal and external interfaces, final specifications of System architecture, including Equipment, Software, and operating system(s) for all system components and interfaces, the detailed System security plan, detailed business and technical requirements, detailed system planning & design, functional hierarchy diagram, entity relationship diagram, data conversion and migration protocols, Software and Equipment configuration plan. The Specifications are incorporated into this Agreement by reference as if fully set forth herein.

- 2.31. **“System(s)”** means a set or combination of information resources (as may be defined or more fully described in an applicable Purchasing Instrument(s), any RFP or Proposal, or other Documentation) including Software, Equipment, Services, or other Deliverables, designed, developed, organized, deployed, or provided by Vendor, directly or indirectly, to a Governmental Entity for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information..
- 2.32. **“Third Party”** means a person or entity (including, any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.
- 2.33. **“Third Party Equipment”** means any Equipment acquired from or provided by or through Third Parties.
- 2.34. **“Third Party Software”** means software, firmware, and other programs licensed or acquired from or provided by or through Third Parties, including any software that CSDC offers as a license reseller for the third party but that is covered by a separate end user license agreement between the licensor and the applicable Governmental Entity.. Third Party Software is not considered “Software” under this Agreement.
- 2.35. **“Update”** means bug fixes, error corrections, and patches to the Software.
- 2.36. **“Vendor Contractor(s)”** means any of Vendors authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Deliverables under this Agreement.
- 2.37. **“Vendor Personnel”** means officers, directors, employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Deliverables under this Agreement.
- 2.38. **“Warranty Period”** means, with respect to Software delivered by Vendor hereunder, a period of 30 days from the date of Final Acceptance of the Software by Vendor or such period as may otherwise be agreed to by the Parties in writing.

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

- 3.1. Purchasing Instruments. Vendor shall commence and complete all work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Acceptance Criteria, Specifications and other requirements specified in this Agreement, including those specified in a Purchasing Instrument, and any related attachments or documents thereto, such as a project plan or other similarly captioned document. Such Deliverables may include, but are not limited to:

- 3.1.1. Maintenance and Support Services;
  - 3.1.2. Training Services;
  - 3.1.3. Information Technology Professional Services;
  - 3.1.4. Software;
  - 3.1.5. Equipment; and
  - 3.1.6. A System or other Deliverables comprised of a combination of any of the foregoing as further described in the applicable Purchasing Instrument(s).
- 3.2. Pre-approval for Participating Agencies. Vendor and OCIO will work to create a mutually agreeable governance structure for the preapproval of Purchasing Instruments to be executed by Participating Agencies hereunder.
- 3.3. Amendments to Purchasing Instruments. A Purchasing Instrument may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of Vendor and the applicable Governmental Entity, subject to any pre-approval process agreed to and implemented by OCIO and Vendor in accordance with Section 3.2 (Pre-approval for Participating Agencies).
- 3.4. Change Order Procedure. A Governmental Entity may at any time request a modification to the scope of a Purchasing Instrument. The following procedures for a change order shall be followed:
- 3.4.1. 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.
  - 3.4.2. 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 a reasonable period of time after receiving the Governmental Entity's change order request.
  - 3.4.3. Effect of Change Order. Both Parties must sign and date the change order to authorize the change in Deliverables described therein and incorporate the changes into the applicable Purchasing Instrument and this Agreement. No Deliverables shall be provided pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both Parties, and subject to obtaining any approval required by any pre-approval process agreed to and implemented by OCIO and Vendor in accordance with Section 3.2 (Pre-approval for Participating Agencies). 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 underlying Purchasing Instrument or this Agreement.
- 3.5. Delivery. Vendor shall deliver to the applicable Governmental Entity all Deliverables identified or described in a Purchasing Instrument within the timeframes set forth therein.

- 3.6. Risk of Loss. To the extent any Deliverables are mailed or shipped, Vendor shall bear all freight, shipping, handling and insurance costs for the delivery and shall bear all risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.
- 3.7. Manufacturer Warranties. Vendor shall take all action necessary to ensure the applicable Governmental Entity is able and entitled to receive and enjoy all warranties, indemnities, or other benefits associated with any Deliverables provided, directly or indirectly, by or through a Third Party hereunder. Vendor hereby assigns to the applicable Governmental Entity (to the extent assignable) all of licensor's and manufacturer's warranties, indemnities, or other associated benefits pertaining to such such Deliverables under any related license or other agreement between Vendor and the applicable Third Party or otherwise conferred on Vendor or to which Vendor is otherwise entitled.
- 3.8. Software.
- 3.8.1. *Documentation.* Vendor acknowledges and agrees that it shall deliver and provide to the applicable Governmental Entity all Documentation related to any Deliverables provided by Vendor hereunder, unless otherwise agreed to in writing by the applicable Governmental Entity.
- 3.8.2. *Licensing.* All Software, including Software delivered as a Service or other similar delivery method, provided by Vendor hereunder is licensed subject to the Licensing Addendum and Product Specific Terms, attached hereto as Attachment B.
- 3.9. Equipment or hardware. Unless otherwise agreed to in writing by the applicable Governmental Entity: 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; A 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 at the time of transfer, to the best of Vendor's knowledge, is free of any rightful claim of any Third Party based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.
- 3.10. Performance Standards. Except as otherwise set forth herein, including in any applicable Special Terms and Conditions, all Acceptance Criteria, Specifications, performance standards and related payment, monitoring, and review provisions shall be as set forth in the applicable Purchasing Instrument.
- 3.11. Reserved.
- 3.12. Source Code Escrow.
- 3.12.1. *Escrow Agent.* As it relates to any Software or System, regardless of the method of delivery (*e.g.*, on premises or as-a-service), provided by Vendor or Vendor Contractors, directly or indirectly, hereunder Vendor or Vendor Contractor, whichever is applicable, the State of Iowa, and an escrow agent approved by the Parties ("**Escrow Agent**") shall enter into a Source Code Escrow Agreement ("**Escrow Agreement**"). Immediately following the

execution of the Escrow Agreement, Vendor or Vendor Contractor, whichever is applicable, shall deliver to the Escrow Agent for deposit all Source Materials. Vendor or Vendor Contractor, whichever is applicable, shall continually update the Source Material by promptly depositing in the escrow each new release, update, version, enhancement, correction, patch, and improvement of the Software or System. Vendor's or Vendor Contractor's, whichever is applicable, duty to update the Source Material shall continue through the Term.

- 3.12.2. *Release Conditions.* The Source Material will be held in the Escrow and the events upon which the State of Iowa shall have access to the Source Material shall include, with respect to Source Material of Vendor or Vendor Contractor (as applicable), (collectively the “**Release Conditions**”): (1) the insolvency of Vendor or Vendor Contractor; (2) the making of a general assignment by Vendor or Vendor Contractor 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 sixty (60) days of the filing thereof; (3) in the event Vendor or Vendor Contractor ceases to provide, maintain, and/or support the Software or System in accordance with the terms of this Agreement for any reason other than the State of Iowa's (or the applicable Governmental Entity's) material breach under this Agreement, and no other qualified entity has assumed the obligation to provide, maintain, and/or support the Software or System; (4) Vendor or Vendor Contractor (i) violates or commits a material breach of any term or condition of this Agreement that materially and adversely affects the applicable Governmental Entity's use of the Software as provided herein and (ii) fails to cure said breach within the applicable cure period; (5) Vendor or Vendor Contractor assigns, transfers, delegates, or subcontracts any of its obligations or duties under this Agreement without the prior written consent of the State (except as otherwise provided herein); (6) Vendor or Vendor Contractor violates or commits a breach of any material term or condition of the source code escrow agreement, which breach has not been cured by Vendor or Vendor Contractor within any applicable time period stated therein for curing such breach.
- 3.12.3. *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 State of Iowa 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 State of Iowa shall be entitled to use the Source Material as needed solely for the purposes, and subject to the terms, set forth herein or in an applicable Purchasing Instrument, EULA, or TOS. Such use will include, but is not limited to, the State of Iowa'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 or those of third party contractors, including Authorized Contractors. Nothing herein shall relieve Vendor or Vendor Contractor, whichever is applicable, of its obligation to provide Services as required under this Agreement.
- 3.12.4. *Proprietary Rights.* The Source Material referred to herein is subject to the confidentiality and proprietary provisions of Section 10. Notwithstanding the

foregoing, following the occurrence of a Release Condition and subsequent release of the Source Material to the State of Iowa, 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 Deliverables solely for the purposes, and subject to the terms, set forth herein or in an applicable Purchasing Instrument, EULA, or TOS. The State of Iowa 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 or Vendor Contractor has an interest, Vendor or Vendor Contractor, or the assignee or successors of either of the foregoing, agree not to assert a claim for patent, copyright, trade secret, trademark or other proprietary information infringement against the State of Iowa provided the use of the Software, System, and Source Material is solely in accordance with the use restrictions set forth in this Agreement or an applicable Purchasing Instrument, EULA, or TOS.

- 3.12.5. *The State of Iowa's Right to Verify Source Material.* Regardless of whether one of the Release Conditions occurs, the State of Iowa shall have the right, at the State of Iowa's sole expense, to verify (through the Escrow Agent and in accordance with the applicable Escrow Agreement) 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 Software and System as compiled and executed from the Source Materials. In the event such testing demonstrates the Source Material does not materially correspond to the Software or System, Vendor shall reimburse State of Iowa for the reasonable costs and fees incurred in the testing that are paid to the Escrow Agent and immediately deposit the correct Source Material with the Escrow Agent.
- 3.12.6. *Version Verification.* The Escrow Agreement shall provide that, upon the State of Iowa's request, the Escrow Agent shall indicate the version of the Source Materials held in the escrow and the date they were received from the Vendor or Vendor Contractor.
- 3.12.7. *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 State of Iowa 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 State of Iowa in accordance with the provisions of this Agreement and the Escrow Agreement, and Vendor or Vendor Contractor, whichever is applicable, hereby conveys and licenses to State of Iowa such rights (including intellectual property rights) as are necessary to allow State of Iowa 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.

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

- 4.1. GSA Schedule. The Deliverables Vendor may provide Governmental Entities under this Agreement are identified in the GSA Schedule, attached as **Attachment A**. Except to extent permitted by law/there is a valid procurement basis to do so, Vendor may only provide Deliverables under this Agreement identified in Attachment A, including any amendments thereto.
- 4.2. Amendments to GSA Schedule. Attachment A may be amended or modified at any time during the term of this Agreement upon the mutual written consent of Vendor and OCIO.
- 4.3. Minimum Price/Price Reductions. Notwithstanding anything in this Agreement, including any Special Terms or Conditions, to the contrary, Vendor may not charge Governmental Entities greater prices for Deliverables than those prices set forth in Attachment A. Nothing in this Agreement shall preclude Vendor from charging Governmental Entities prices/rates less than those set forth in Attachment A.
- 4.3.1. *GSA Price Reductions*. If, during the term of the Agreement, including all extensions and renewals, there is a Price Reduction, Governmental Entities making purchases hereunder after such Price Reduction will be entitled to purchase Deliverables at the applicable Reduced Price. Vendor must notify OCIO and other impacted Governmental Entities within thirty (30) days of the effective date of a Price Reduction and immediately reduce the price of any Deliverables subsequently purchased under this Agreement. Vendor and OCIO may amend Attachment A to reflect such Price Reduction. OCIO's failure to enforce this provision shall not be construed as an implied waiver of Vendor's obligations to extend such Price Reductions to Governmental Entities (provided no such Price Reductions will retroactively apply to any purchases made hereunder unless Vendor has failed to notify OCIO and other impacted Governmental Entities of such Price Reduction in advance of any such purchase) or to notify OCIO or other impacted Governmental Entities of a Price Reduction under this Section.
- 4.3.2. *General Price Reductions*. Vendor must notify OCIO within thirty (30) days of any general reduction in price on the open market of any Deliverables available under this Agreement, even if the general reduction does not reduce the price below the current price under this Agreement or the GSA Schedule. The purpose of this notice is to allow OCIO and other Governmental Entities making purchases hereunder to assess the value of this Agreement. OCIO may seek to renegotiate the price of related Deliverables for which it has been notified of a general reduction in price, but Vendor will have no obligation to reduce the price of any Deliverable previously purchased or subscribed for under this Agreement. OCIO's failure to enforce this provision shall not be construed as an implied waiver of Vendor's obligations to notify OCIO of a general reduction in price under this Section.
- 4.4. Compensation. In consideration of Vendor providing Governmental Entities Deliverables under this Agreement, Vendor shall be entitled to receive the fees or other compensation

associated with such Deliverables in accordance with the prices/rates set forth in the GSA Schedule and, subject to and solely the extent consistent with the terms and conditions of this Agreement, as set forth applicable Purchasing Instrument(s). Except to the extent otherwise permitted herein, the applicable Governmental Entity shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement or any Purchasing Instrument(s). Vendor is not entitled to payment for any Deliverable(s) to the extent that such Deliverable(s) fails to meet or conform to any applicable Specifications or Acceptance Criteria or that there is a material Deficiency with respect to such Deliverable(s). In no event shall a Governmental Entity be obligated to pay Vendor any fees, costs, compensation or other amounts in excess of the amount specified in a Purchasing Instrument for any one or more Deliverable(s), unless the applicable Governmental Entity otherwise agrees to pay such fees, costs, compensation, or other amounts pursuant to a written Change Order or an amendment to the applicable Purchasing Instrument executed by the applicable Governmental Entity. No payment for time and materials based Deliverables shall be construed as Acceptance of such time and materials based Deliverables, unless and until the parties have performed proper Acceptance Testing and other such procedures pursuant to Section 5 of this Agreement, or as may otherwise be identified in an applicable Purchasing Instrument, and valid Acceptance has been delivered. No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement.

- 4.5. Invoices. Upon Acceptance of any Deliverable provided hereunder, or in a manner as may otherwise be agreed to in an applicable Purchasing Instrument, Vendor shall submit an invoice to the applicable Governmental Entity requesting payment of the fees or other compensation specified in the Purchasing Instrument associated with such Deliverable(s), less any Retained Amount(s) to be withheld in accordance with Section 4.6 (Retention). All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges, or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the applicable Governmental Entity. The applicable Governmental Entity shall verify Vendor's performance/provisioning of Deliverables outlined in the invoice before making payment. Except for payments identified as authorized prepayments in a Purchasing Instrument agreed to by the applicable Governmental Entity, the applicable Governmental Entity shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code 8A.514 and corresponding implementing rules, regulations, and policies. The applicable Governmental Entity may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code § 8A.514. Notwithstanding anything herein to the contrary, the applicable Governmental Entity shall have the right to withhold payment of any amount invoiced subject to a bona fide dispute.
- 4.6. Retention. To secure Vendor's performance under this Agreement, a Governmental Entity may retain ten percent (10%) 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 applicable Governmental Entity has given Final Acceptance. Retained Amounts shall be



payable upon the applicable Governmental Entity's delivery of written notice of Final Acceptance, subject to the terms and conditions hereof.

- 4.7. Erroneous Payments and Credits. Vendor shall promptly pay or refund to the applicable Governmental Entity the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Vendor or notification by the applicable Governmental Entity of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the applicable Governmental Entity under this Section, the applicable Governmental Entity may charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount otherwise allowed by law, whichever is greater. The applicable Governmental Entity may, in its sole discretion, elect to have Vendor apply any amounts due and owing the Governmental Entity under this Section against any amounts payable by the applicable Governmental Entity under this Agreement.
- 4.8. Reimbursable Expenses. Subject to applicable laws, rules, policies, and procedures, and solely to the extent required by a Purchasing Instrument, a Governmental Entity shall reimburse Vendor for the actual, reasonable, and allowable costs of transportation, meals, and lodging incurred by Vendor in connection with travel incurred by Vendor in providing Services to the applicable Governmental Entity; provided, however that:
- 4.8.1. An estimate of all such costs shall be submitted by Vendor and approved by the applicable Governmental Entity in advance of any such travel; and
- 4.8.2. Notwithstanding any such approval by the applicable Governmental Entity, any reimbursement for allowable transportation, meals, and lodging shall not exceed the maximum reimbursement rates permitted for the applicable Governmental Entity's personnel/Vendors generally (*See, e.g., State Accounting Policy and Procedures Manual 210.245 and 210.305 for example of State of Iowa reimbursement policy*).
- Vendor agrees to comply with any other travel policies, procedures, or requirements applicable to the Governmental Entity's personnel/Vendors generally. In order to obtain reimbursement for travel expenses, Vendor must submit a copy and itemized receipts and any other supporting documentation as may be requested by the applicable Governmental Entity with respect to all costs and expenses submitted by Vendor for reimbursement. The Governmental Entity or its designee reserves the right to audit all reimbursement requests and to withhold or deny reimbursement for Vendor's failure to comply with the requirements of this Section, including applicable travel laws, rules, policies, and procedures. Except for the foregoing, there shall be no other reimbursable expenses associated with this Agreement, and Vendor shall be solely responsible for all other costs, charges, and expenses it incurs in connection with its performance under this Agreement, including equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other operational and administrative costs and expenses.
- 4.9. Set-off Against Sums Owed by Vendor. In the event Vendor owes a Governmental Entity any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the applicable Governmental Entity may set off such sum against any sum invoiced to the Governmental Entity by Vendor in the Governmental Entity's sole discretion. Any amounts due the Governmental Entity as damages may be deducted

by the Governmental Entity from any money or sum payable by the Governmental Entity to Vendor pursuant to this Agreement or any other agreement between Vendor and the Governmental Entity.

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

4.10.1. Vendor has failed to materially perform any of its duties or obligations as set forth in this Agreement; or

4.10.2. Any Deliverable has materially failed to meet or conform to any applicable Specifications or Acceptance Criteria or contains or is experiencing a material Deficiency.

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

- 4.11. Correction/Cure. A Governmental Entity may correct any Deficiencies with respect to any Deliverable(s) or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the commercially reasonable time period specified in a notice of default from the Governmental Entity. A Governmental Entity may procure the Deliverable(s) reasonably necessary to correct any Deficiencies or cure any Vendor default, in which event Vendor shall reimburse the Governmental Entity for the actual costs incurred by the Governmental Entity for such Deliverable(s) or cure. In addition, Vendor shall reasonably cooperate with the Governmental Entity or any Third Parties retained by the Governmental Entity which assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor's; provided that such Governmental Entity or Third Party agrees in writing to be bound by the terms of this Agreement.

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

4.12.1. Correct the Deficiency and repair the affected Deliverable(s); and

4.12.2. Provide the Governmental Entity with all necessary and related materials related to such repaired or corrected Deliverable(s), including the provision of new master program disks or other media acceptable to the Governmental Entity, and related Documentation.

- 4.13. Administrative Fees. Without affecting the prices/rates specified in Schedule A, Vendor shall provide to OCIO a 1.00% administrative fee on all sales made against this Agreement. For purposes of calculating such fee: (i) only funds actually received by Vendor during any such period shall count as sales made against this Agreement; (ii) Vendor's reimbursed expenses shall not count as sales made against this agreement; and (iii) any credits or adjustments in respect of such sales shall be applied toward such fee

during the period of such credit or adjustment. This 1.00% administrative fee shall be paid quarterly to:

**Attn:** Business Services Division Administrator

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Iowa Office of the Chief Information Officer

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Hoover State Office Building, Level B

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Des Moines, IA 50319

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Payment shall be made in accordance with the following schedule:

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

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

5.1. Acceptance Testing. All Deliverables shall be subject to the applicable Governmental Entity’s Acceptance Testing and Acceptance, which, to the extent not set forth in this Agreement, must be set forth in writing in the applicable Purchasing Instrument(s). Upon completion of all work to be performed by Vendor with respect to any Deliverable or group of Deliverables, Vendor shall deliver a written notice to the applicable Governmental Entity certifying that the Deliverable(s) meets and conforms to applicable Specifications and is ready for the Governmental Entity to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable(s) to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the applicable Governmental Entity. At a Governmental Entity’s request, Vendor shall reasonably assist in performing Acceptance Tests at no additional cost to the Governmental Entity. Unless a specific Acceptance timeline is otherwise set forth in the applicable Purchasing Instrument, the Governmental Entity shall provide Vendor with written notice of Acceptance or Non-Acceptance with respect to each Deliverable evaluated during such Acceptance Testing, within a reasonable period of time after Vendor has delivered the written notice described in the second sentence of this Section, and in any event, within thirty (30) after Vendor has delivered such notice. If, after the initial thirty (30) day notification period (or such other initial period as may be set forth in the applicable Purchasing Instrument), the Governmental Entity has not delivered written notice of Acceptance or Non-Acceptance of Deliverable(s), Vendor shall provide notice and opportunity to the Governmental Entity for an additional fifteen (15) day notification period. If after this additional notification period the Governmental Entity still has not provided written notice of Acceptance, Non-Acceptance, or other such status report as may be deemed reasonable and responsive in the sole discretion of Vendor, the Deliverable(s) may be deemed Accepted. If the Governmental Entity determines that a Deliverable(s) satisfies its Acceptance Tests, the Governmental Entity shall provide Vendor with notice of Acceptance with respect to such Deliverable(s). If the

Governmental Entity determines that a Deliverable(s) fails to satisfy its Acceptance Tests, the Governmental Entity shall provide Vendor with notice of Non-acceptance with respect to such Deliverable(s). In the event the Governmental Entity provides notice of Non-acceptance to Vendor with respect to any Deliverable(s), Vendor shall correct and repair such Deliverable(s) and submit it to the Governmental Entity within a reasonable period of time, and in any event, within thirty (30) days of Vendor's receipt of notice of Non-acceptance so the Governmental Entity may re-conduct its Acceptance Tests with respect to such Deliverable(s). In the event the Governmental Entity determines after re-conducting its Acceptance Tests with respect to any Deliverable(s) that Vendor has attempted to correct or repair pursuant to this Section that such Deliverable fails to satisfy its Acceptance Tests, then the Governmental Entity shall have the continuing right, at its sole option, to:

- 5.1.1. Require Vendor to correct and repair such Deliverable(s) within such reasonable 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); or,
- 5.1.3. Terminate the applicable Purchasing Instrument and/or seek any and all available remedies, including damages. Notwithstanding any other provisions of this Agreement related to termination, a Governmental Entity may terminate a Purchasing Instrument in its entirety pursuant to this Section without providing Vendor any notice or opportunity to cure.

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

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

- 5.2.1. *Vendor or Project Manager*. At the time of execution of a Purchasing Instrument, Vendor shall designate, in writing, a Project Manager acceptable to the applicable Governmental Entity to serve until Final Acceptance is given by the Governmental Entity. Vendor will assign a Project Manager of a management level sufficient to ensure timely responses from all Vendor Personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the applicable Governmental Entity prior to his or her appointment as Vendor's

Project Manager. Vendor represents and warrants that its Project Manager will be fully qualified to perform the tasks required of that position under the applicable Purchasing Instrument. Vendor's Project Manager shall be able to make binding decisions for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Governmental Entity's site as needed during the course of work under the applicable Purchasing Instrument and will be available either in person, by telephone, or email to respond promptly during the business day to inquiries from the applicable Governmental Entity. Notwithstanding anything to the contrary in this Agreement or an applicable Purchasing Instrument, Vendor may substitute any Project Manager with the consent of the applicable Governmental Entity, which consent will not be unreasonably withheld.

- 5.2.2. *Review Meetings.* Beginning upon the execution of a Purchasing Instrument, Vendor's Project Manager shall meet weekly with the Governmental Entity's project manager and representatives, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor. At each review meeting, Vendor's Project Manager shall provide a status report, which shall include, at minimum, the information described in Section 5.2.3 and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any Party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance under this Agreement. Any such meetings may be conducted remotely by telephone or video conference, unless otherwise agreed to by the Parties. In the event the applicable Governmental Entity requires Vendor's Project Manager to conduct such meetings in person, such Governmental Entity shall reimburse Vendor for its reasonable expenses incurred in accordance with the expense reimbursement procedures set forth herein.
- 5.2.3. *Reports.* Unless otherwise mutually agreed by the Parties, Vendor shall provide the applicable Governmental Entity with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Governmental Entity may reasonably request. Vendor's proposed format and level of detail for its status reports shall be subject to the Governmental Entity's reasonable approval.
- 5.2.4. *Problem Reporting Omissions.* A Governmental Entity's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that the Governmental Entity may have. A Governmental Entity's failure to

identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance or constitute Acceptance under this Agreement.

5.2.5. *Problem Reporting to OCIO.* To aid in the contract administration/oversight process, Governmental Entities making purchases hereunder shall report any problems experienced with Vendor, Vendor Contractors, or Vendor Personnel to OCIO, and shall log such problems in the System.

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

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

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

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

5.3.2. *Review Meetings.* Vendor and OCIO shall meet quarterly, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor on Deliverables/projects Vendor is currently providing to/working on with Governmental Entities under this Agreement, and to discuss Vendor’s performance generally. At each review meeting, Vendor shall provide a status report, which shall include, at minimum, the information described in Section 5.3.1 and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any Party may recommend alternative courses of action or changes that will facilitate problem resolution. Any such meetings may be conducted remotely by telephone or video conference, unless otherwise agreed to by the Parties. In the event OCIO requires Vendor to conduct such meetings in person, such Governmental Entity

shall reimburse Vendor for its reasonable expenses incurred in accordance with the expense reimbursement procedures set forth herein.

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

## 6. **Ownership and Intellectual Property.**

- 6.1. Ownership of Vendor-Owned Deliverables. Except as specifically granted in a Purchasing Instrument, other agreement (including the Old Contract), or as otherwise provided in this Agreement, Vendor shall own all Deliverables that are not Customer-Owned Deliverables, provided under this Agreement (“**Vendor-Owned Deliverables**”).
- 6.2. License to Vendor-Owned Deliverables. A Governmental Entity's use of Vendor-Owned Deliverables are subject to the terms set forth in the Licensing Addendum, except as otherwise provided in this Agreement or an applicable Purchasing Instrument, including any Special Terms and Conditions
- 6.3. Ownership and Assignment of Customer-Owned Deliverables. Vendor hereby irrevocably assigns, transfers, and conveys to the commissioning Governmental Entity all right, title and interest in and to Customer-Owned Deliverables provided to such Governmental Entity hereunder. Except as otherwise agreed to in writing, including in any Purchasing Instrument, Vendor represents and warrants that the applicable Governmental Entity shall acquire good and clear title to all Customer-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including Vendor Contractors and Vendor Personnel. Except as otherwise agreed to in writing, including in any Purchasing Instrument, 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 reasonably deems appropriate. Immediately upon the request of the Governmental Entity, Vendor will deliver to the Governmental Entity or destroy, or both, at the Governmental Entity's option, all copies of any Customer-Owned Deliverables in the possession of Vendor.
- 6.4. Waiver. To the extent any of Vendor's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Vendor hereby irrevocably and unconditionally agrees not to challenge the applicable Governmental Entity's rights in and to Customer-Owned Deliverables.
- 6.5. Acknowledgement. Vendor acknowledges and agrees that the applicable Governmental Entity, as owner and assignee of Customer-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation:
- 6.5.1. Obtain, secure, file and apply for any legal protection necessary to secure or protect any rights in and to Customer-Owned Deliverables, including the

- prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto;
- 6.5.2. Adapt, change, modify, edit or use Customer-Owned Deliverables as the applicable Governmental Entity sees fit, including in combination with the works of others, prepare derivative works based on Customer-Owned Deliverables, and publish, display, perform and distribute throughout the world any Customer-Owned Deliverable(s) in any medium, whether now known or later devised, including any digital or optical medium; and
  - 6.5.3. Make, use, sell, license, sublicense, lease, or distribute Customer-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party.
- 6.6. Further Assurances. At the applicable Governmental Entity's or State's request, Vendor will (both during and after the termination or expiration of this Agreement, but subject to reasonable compensation of Vendor) execute and deliver such instruments, provide all facts known to it, and take such other action as may be reasonably necessary for the Governmental Entity or State to:
- 6.6.1. Establish, perfect or protect the applicable Governmental Entity's or State's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 6.3, and
  - 6.6.2. Obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof.

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

- 6.7. Third Party Intellectual Property. Except as otherwise provided herein or in an applicable Purchasing Instrument, in the event a Deliverable(s) is intellectual property owned by a Third Party ("**Third Party Intellectual Property**"), Vendor shall secure on behalf of and in the name of the applicable Governmental Entity, an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the Third Party Intellectual Property, and to authorize others to do the same on the applicable Governmental Entity's behalf, including its Authorized Contractors. Except as otherwise provided herein or in an applicable Purchasing Instrument, in the event that a Deliverable(s) created by Vendor under this Agreement is a derivative work based upon Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Vendor shall secure on behalf of and in the name of the applicable Governmental Entity an irrevocable,



nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the pre-existing elements of such Third Party Intellectual Property, and to authorize others to do the same on the applicable Governmental Entity's behalf.

- 6.8. Rights of the Federal and State Government. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant and subject to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Agreement and the copyright in and to such Deliverables. Similarly, in addition to any rights granted hereunder, but subject to the terms hereof, Vendor and the applicable Governmental Entity grants to or shall secure on behalf of OCIO and the State and their Authorized Contractors, to the extent applicable, an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host Customer-Owned Deliverables and to the extent Vendor is able to secure any related Third Party Intellectual Property. Notwithstanding the foregoing, unless otherwise specified in an applicable Purchasing Instrument the Software, Services, and other Deliverables provided by Vendor hereunder: (i) are "commercial computer software," "commercial computer software documentation," and "technical data," as applicable, as defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation; and (ii) were developed at private expense and are provided with RESTRICTED RIGHTS.
- 6.9. Customer Property. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement. Customer Property shall at all times remain the property of the applicable Governmental Entity.
- 6.10. Additional Rights. Except as otherwise provided herein or in an applicable Purchasing Instrument, and subject to the Licensing Addendum, with respect to any license granted to a Governmental Entity pursuant to this Agreement, such grant of license shall be deemed to include the following grant of rights to the applicable Governmental Entity:
- 6.10.1. Use, install, host, access, execute, copy, format, translate, maintain, support, repair, enhance, test, demonstrate, and display the Deliverables or System, in all media now known or hereafter created, including the right to host or install the Deliverables on any one or more of the computers, data center locations, networks, Internet or intranet sites, servers or other systems of the applicable Governmental Entity or any of its Authorized Contractors.
  - 6.10.2. Combine and use the Deliverables with other software, firmware, other code, including public code, and hardware;
  - 6.10.3. The same grant of rights granted to the applicable Governmental Entity to its Authorized Contractors; and
  - 6.10.4. The right to permit access to and use of the Deliverables and its functions by end users.

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

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

7.1. Deliverables Free of Deficiencies. Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement during the Warranty Period. During the Warranty Period, Vendor shall, at its expense, repair, correct, or replace any Deliverable(s) that contains or experiences material Deficiencies or fails to meet, conform to, or operate in accordance with Specifications within a reasonable amount of time, and, in any event, within thirty (30) days of receiving notice of such Deficiencies or failures from the applicable Governmental Entity. In the event Vendor is unable to repair, correct, or replace such Deliverable(s) to the applicable Governmental Entity's satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverable(s). The foregoing shall not constitute an exclusive remedy under this Agreement, and the applicable Governmental Entity shall be entitled to pursue any other available contractual, legal, or equitable remedies. Vendor shall be available at all reasonable times to assist the Governmental Entity with questions, problems, and concerns about the Deliverable(s), to inform the Governmental Entity promptly of any known Deficiencies in any Deliverable(s), repair and correct any Deliverable(s) not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable(s) may have been accepted by the Governmental Entity, and provide the applicable Governmental Entity with all necessary materials and any related Services with respect to such repaired or corrected Deliverable(s). Acceptance Testing will not in any way relieve Vendor of its responsibilities to correct any Deficiency during the Warranty Period.

7.2. Reserved.

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 any Governmental Entity hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed any Governmental Entity hereunder without violating any rights of any Third Party; and (ii) the applicable Governmental Entity shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption or interruption.

7.4. Intellectual Property. Vendor represents and warrants that: (i) the applicable Governmental Entity's use of, and exercise of any rights with respect to, the Deliverables as provided herein (and all intellectual property rights therein and related thereto), does

not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform applicable Governmental Entities and OCIO in writing immediately upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret related to the Deliverables. If such a claim or cause of action arises or is likely to arise, Vendor shall, at Vendor's option and sole expense: (i) procure for the applicable Governmental Entity the right or license to continue to use the Deliverable(s) at issue; (ii) replace such Deliverable(s) with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation, or misappropriation; (iii) modify or replace the affected portion of the Deliverable(s) with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable(s) at issue and refund to the applicable Governmental Entity all fees, charges and any other amounts paid by the Governmental Entity under this Agreement 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 from any IP Claim as provided in Section 8.1.7 of this Agreement.

- 7.5. No Other Warranties. Except for the warranties expressly stated in the Agreement, Vendor makes no representations or warranties whatsoever, **and disclaims any implied warranties such as any warranty of merchantability, suitability for a particular purpose, or any warranty that may arise through a course of dealing.** If applicable law requires a warranty notwithstanding this disclaimer, then that warranty is made for thirty (30) days from Final Acceptance of the applicable Deliverable.
- 7.6. Workmanlike Manner. Vendor represents, warrants, and covenants that all Services to be performed under this Agreement shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as the applicable Governmental Entity notifies Vendor of any Services performed in violation of this standard, Vendor shall re-perform the Services at no cost to the applicable Governmental Entity, such that the Services are rendered in the above-specified manner, or if Vendor is unable to perform the Services as warranted, after reasonable opportunity to correct or perform such Services, Vendor shall reimburse the applicable Governmental Entity any fees or compensation paid to Vendor for the unsatisfactory services.
- 7.7. Compliance with Law. Vendor represents, warrants, covenants, and promises that, to the extent applicable to Vendor's performance hereunder, Vendor, Vendor Contractors, and Vendor Personnel have complied with, and shall continue to comply with, and, to the extent applicable, the Deliverables will comply with, all applicable federal, state, foreign,

and local laws, rules, regulations, codes, standards, ordinances, and orders in connection with the performance of this Agreement, including the following:

- 7.7.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State's written request, Vendor shall submit to the State a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
- 7.7.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
- 7.7.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 7.7.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 7.7.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.0, , including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
- 7.7.6. All applicable information technology standards, procedures, protocols, and other requirements, including applicable standards and requirements established by OCIO, *available at* <https://ocio.iowa.gov/standards>.
- 7.7.7. To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the federal government, any corresponding terms, conditions, or requirements imposed by applicable law, rule, regulation policy, order, or otherwise.

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

- 7.8. No Conflicts. Vendor represents, warrants, and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

- 7.9. Up to Date on Payments. Vendor represents and warrants it is not in arrears with respect to the payment of any monies due and owing any Governmental Entity within the State of Iowa, including the payment of taxes and employee benefits, and covenants and warrants it will not become so during the term of this Agreement, or any extensions thereof.
- 7.10. Documentation. Vendor represents, warrants and covenants that for the duration of the Agreement and the Warranty Period, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains, and the Documentation will enable applicable Governmental Entities to use and maintain such Deliverable(s) for their intended purposes.
- 7.11. Cumulative Warranties. Except to the extent otherwise provided herein, Vendor's warranties provided in this Section are in addition to and not in lieu of any other warranties provided in this Agreement.

## 8. **Indemnification.**

- 8.1. Generally. Vendor and its successors and permitted assigns shall indemnify and hold harmless the applicable Governmental Entity and their employees, officers, board members, agents, representatives, and officials ("**Indemnitees**") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) that are incurred by an Indemnatee (collectively, "Losses"), to the extent any such Losses arise out of a Third Party claim alleging::
- 8.1.1. Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor; or
- 8.1.2. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, Vendor Contractors, or Vendor Personnel under this Agreement; or
- 8.1.3. Failure by Vendor, Vendor Contractors, or Vendor Personnel to comply with any applicable local, state, and federal laws, rules, ordinances, regulations, standards, or orders; or
- 8.1.4. Any failure by Vendor or Vendor Contractors to make all reports, payments, and withholdings required by federal and state law with respect to Social Security, workers compensation, employee income and other taxes, fees or costs required by Vendor or Vendor Contractors to conduct business in the State; or
- 8.1.5. Any intentional torts, personal injuries or damages to property, including Customer Property, to the extent such injury or damage is caused by Vendor, Vendor Contractors, or Vendor Personnel with respect to work performed, or Deliverables provided, under this Agreement, including any Security Breach for which Vendor, Vendor Contractors, or Vendor Personnel are responsible; or
- 8.1.6. Damages related to wages, benefits, compensation, insurance, discrimination, the misclassification of employees as independent contractors or any

allegations or findings of the existence of a joint employment relationship involving Vendor Personnel, or other similar claims asserted against any Governmental Entity making purchases hereunder by any Vendor Personnel in connection with Vendor's performance hereunder; or,

- 8.1.7. That the Deliverables provided by Vendor hereunder, or any use thereof (or the exercise of any rights with respect thereto) as permitted hereunder, misappropriates or infringes the intellectual property rights (including patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right) of any Third Party (an **"IP Claim"**).

8.2. Vendor's duties as set forth in this Section shall survive termination of this Agreement.

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

9.1. Termination for Cause by OCIO or Governmental Entities. OCIO may terminate this Agreement and the applicable Governmental Entity may terminate a Purchasing Instrument upon written notice of Vendor's breach of any material term, condition or provision of this Agreement or the applicable Purchasing Instrument, if such breach is not cured within the time period specified in OCIO's or the applicable Governmental Entity's notice of breach or any subsequent notice or correspondence delivered by OCIO or the applicable Governmental Entity to Vendor (provided such time period reasonably affords Vendor an opportunity to cure such breach, and provided further that no such time period shall operate to shorten any cure period expressly provided for herein or in the applicable Purchasing Instrument), provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for liquidated damages. In addition, OCIO may terminate this Agreement and the applicable Governmental Entity may terminate a Purchasing Instrument effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

- 9.1.1. Vendor directly furnished any representation, warranty or certification in connection with this Agreement that is false, fraudulent, or materially incorrect or incomplete;
- 9.1.2. Vendor or Vendor Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has committed or engaged in (as ultimately determined by a court of competent jurisdiction) fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 9.1.3. Dissolution of Vendor, provided such dissolution is not part of a transaction in which all or substantially all of the assets of Vendor are purchased or acquired by a successor entity (whether by merger, combination, reorganization, or otherwise);
- 9.1.4. Vendor's authorization to engage in business in Iowa is suspended, terminated, revoked, or forfeited;
- 9.1.5. Vendor or Vendor Personnel has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations, standards, or orders when performing within the scope of this Agreement;

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

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

- 9.2. Termination for Cause by Vendor. Vendor may only terminate an applicable Purchasing Instrument upon written notice of the breach by the applicable Governmental Entity of any material term, condition, or provision of this Agreement or the applicable Purchasing Instrument, if such breach is not cured within sixty (60) days of the applicable Governmental Entity's receipt of Vendor's written notice of breach.
- 9.3. Termination for Convenience. Following thirty (30) days written notice, OCIO may terminate this Agreement in whole or in part and the applicable Governmental Entity may

terminate a Purchasing Instrument in whole or in part for convenience without the payment of any penalty or incurring any further obligation or liability to Vendor. Termination for Convenience under this Section shall not relieve OCIO or a Governmental Entity of any obligation for payment of outstanding properly Accepted invoices for Deliverables or other Services provided hereunder. Termination for convenience can be for any reason or no reason at all.

- 9.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, OCIO shall have the right to terminate this Agreement and the applicable Governmental Entity shall, upon written notice, have the right to terminate a Purchasing Instrument without penalty or liability and without any advance notice as a result of any of the following:
- 9.4.1. The Iowa state legislature, governor, or other applicable governing body fail in the sole opinion of OCIO or the applicable Governmental Entity to appropriate funds sufficient to allow OCIO or the applicable Governmental Entity to either meet its obligations under this Agreement or the applicable Purchasing Instrument or to operate as required and to fulfill its obligations under this Agreement or the applicable Purchasing Instrument; or
  - 9.4.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by OCIO or the applicable Governmental Entity to make any payment hereunder are insufficient or unavailable for any other reason as determined by OCIO or the applicable Governmental Entity in its sole discretion; or
  - 9.4.3. If OCIO's or the applicable Governmental Entity's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or
  - 9.4.4. If OCIO's or the applicable Governmental Entity's duties, programs, or responsibilities are modified or materially altered; or
  - 9.4.5. If there is a decision of any court, administrative law judge or an arbitration panel of competent jurisdiction, or any law, rule, regulation, or order is enacted, promulgated, or issued, in either case that materially and adversely affects OCIO's or the applicable Governmental Entity's ability to fulfill any of its obligations under this Agreement or the applicable Purchasing Instrument or the operation of a System purchased hereunder.
- 9.5. Limitation of Payment Obligations. In the event of a termination of this Agreement or a Purchasing Instrument for any reason (except for termination for cause by OCIO or a Governmental Entity pursuant to Section 9.1), the applicable Governmental Entity shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the Governmental Entity up to and including the date of termination of this Agreement or the applicable Purchasing Instrument and for which the Governmental Entity is obligated to pay pursuant to this Agreement; provided however, that in the event of a termination pursuant to Section 9.4, the applicable Governmental Entity's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section in no way limits the rights or remedies available to the applicable



Governmental Entity and shall not be construed to require the Governmental Entity to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts otherwise withheld by the Governmental Entity in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, a Governmental Entity shall not be liable, under any circumstances, for any of the following:

- 9.5.1. The payment of unemployment compensation to Vendor Personnel;
  - 9.5.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
  - 9.5.3. Any costs incurred by Vendor in its performance of the Agreement, including startup costs, overhead or other costs associated with the performance of the Agreement;
  - 9.5.4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;
  - 9.5.5. Any taxes Vendor may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes or property taxes.
- 9.6. Vendor's Termination or Expiration Duties. Upon receipt of notice of termination, upon expiration, or upon request of the applicable Governmental Entity, Vendor shall:
- 9.6.1. Except as otherwise required pursuant to Section 9.7, cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as OCIO or the applicable Governmental Entity may reasonably require;
  - 9.6.2. Immediately cease using and return to the applicable Governmental Entity any property (including Customer Property) or materials, whether tangible or intangible, provided by a Governmental Entity to Vendor hereunder;
  - 9.6.3. Immediately return to the applicable Governmental Entity any payments made by the Governmental Entity for Deliverables that were not rendered or provided by Vendor;
  - 9.6.4. Subject to the terms of this Agreement, immediately deliver to OCIO and the applicable Governmental Entity any and all Deliverables that the applicable Governmental Entity has paid for and that is in the possession of or under the control of Vendor, Vendor Contractors, or Vendor Personnel in whatever stage of development or form at the time of such termination.
- 9.7. Vendor Cooperation/Transition Services. Vendor agrees that in connection with any termination or expiration of this Agreement or any Purchasing Instrument, Vendor will continue to perform such Services under this Agreement as OCIO or the applicable Governmental Entity may request for a transition period up to 365 days from the effective date of termination or expiration of this Agreement. As part of such request, OCIO or the applicable Governmental Entity will inform Vendor of the number of days during which

Vendor will perform transition and other related Services under this Section (“**Transition Period**”). During the Transition Period, to the extent applicable, Vendor will take all actions as may be necessary or requested by OCIO or the applicable Governmental Entity to accomplish a complete and timely transition, including a full migration of Customer Data, from Vendor to the applicable Governmental Entity or any Authorized Contractor hired or utilized by the applicable Governmental Entity to provide any replacement or similar Services or System (the “**New Contractor**”). Vendor will use its best efforts to cooperate with the applicable Governmental Entity and any New Contractor, and to fully comply with all requests of the Governmental Entity to effect a smooth and timely transition and to ensure there is no interruption of any Services, information, or transactions provided or conducted through any System. Vendor agrees that it will perform all transition services in good faith and in a professional and businesslike manner, and shall comply with all reasonable requests of the applicable Governmental Entity or any New Contractor to assist in the effort to accomplish a successful, seamless and unhindered transition of any System, migration of Customer Data, and transfer of Vendor’s responsibilities under this Agreement. At the applicable Governmental Entity’s request, Vendor shall, subject to the terms of any Third Party contracts, procure for the applicable Governmental Entity any third-party authorizations or licenses necessary to grant the applicable Governmental Entity and any New Contractor the use and benefit of any contracts between Vendor and Third Parties and any Third Party Intellectual Property. During the Transition Period, the applicable Governmental Entity agrees to pay Vendor any fees to which Vendor would be entitled under this Agreement for Deliverables performed or provided during such period. In the event the Governmental Entity’s request for transition assistance does not require Vendor to continue providing all of the Deliverables under this Agreement or a particular Purchasing Instrument, the Parties shall negotiate in good faith an equitable adjustment in the fees which are otherwise payable to Vendor for such Deliverables.

- 9.8. Survival. Expiration or termination of this Agreement or a Purchasing Instrument for any reason will not release either Party from any liabilities or obligations set forth in this Agreement which:
- 9.8.1. The Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections:
    - 9.8.1.1. 4 (Compensation and Additional Rights and Remedies);
    - 9.8.1.2. 6 (Ownership and Intellectual Property);
    - 9.8.1.3. 7 (Representations, Warranties, and Covenants);
    - 9.8.1.4. 8 (Indemnification);
    - 9.8.1.5. 9 (Term and Termination);
    - 9.8.1.6. 10 (Confidentiality);
    - 9.8.1.7. 11 (Security/Privacy, Business Continuity, and Disaster Recovery);
    - 9.8.1.8. 12 (Contract Administration); and
    - 9.8.1.9. 13 (Limitation of Liability).
  - 9.8.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

10. **Confidentiality.**

10.1. Vendor's Treatment of Confidential Information.

10.1.1. *Limited Access.* Customer Data shall at all times remain the property of the applicable Governmental Entity, and the applicable Governmental Entity shall retain exclusive rights thereto and ownership thereof. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Data to the extent necessary to carry out its duties under the Agreement. Vendor, Vendor Contractors, or Vendor Personnel shall hold any and all Customer Data in strictest confidence and will use and permit use of Customer Data solely for the purposes of providing Deliverables under this Agreement, subject to the restrictions set forth herein and all applicable state and federal laws, rules, regulations, standards, and orders applicable either during the term of this Agreement or thereafter. Vendor, Vendor Contractors, and Vendor Personnel shall not gather, store, log, archive, use, or otherwise retain Customer Data in any manner other than as expressly authorized by this Agreement and will not disclose, distribute, sell, commercially or politically exploit, share, rent, assign, lease, or otherwise transfer Customer Data to any Third Party, except as expressly permitted hereunder or as Vendor may be expressly directed in advance in writing by the applicable Governmental Entity. Vendor, Vendor Contractors, and Vendor Personnel shall not remove from any Governmental Entity's facilities or retain a copy of any Customer Data unless such removal or retention is reasonably necessary to provide or perform Deliverables, to fulfill its obligations under this Agreement, or is otherwise approved in writing by the applicable Governmental Entity.

10.1.2. *Destruction or Return of Customer Data.* On the applicable Governmental Entity's written request or upon expiration or termination of this Agreement or applicable Purchasing Instrument for any reason, Vendor will promptly:

10.1.2.1. After providing notice to the applicable Governmental Entity and subject to its prior written approval, return or destroy, at the applicable Governmental Entity's option, Customer Data; and

10.1.2.2. Provide a notarized written statement to the applicable Governmental Entity certifying all Customer Data has been returned or destroyed to the Governmental Entity, whichever is applicable.

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

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

10.1.3.1. As soon as becoming aware of such law, order, or requirement, Vendor will notify the applicable Governmental Entity in

writing, specifying the nature of and circumstances surrounding the contemplated disclosure, and forward any applicable process, including a subpoena, to the appropriate Governmental Entity for its review.

- 10.1.3.2. Vendor will consult with the applicable Governmental Entity on the advisability of taking legally-available steps to resist or narrow any required response or disclosure.
- 10.1.3.3. Vendor will use best efforts not to release Customer Data pending the outcome of any measures taken by the applicable Governmental Entity to contest, oppose, or otherwise seek to limit such disclosure by Vendor or any Third Party ultimately obtaining such Customer Data. Vendor will cooperate with and provide assistance to the applicable Governmental Entity regarding such measures.
- 10.1.3.4. Soley the extent Vendor is required to disclose Customer Data to a Third Party, Vendor will furnish only such portion of Customer Data as it is required to disclose and will exercise best efforts to obtain an order or other reliable assurances that Customer Data will be held in confidence by any Third Party to which it is disclosed.

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

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

- 10.2.1. *Safeguarding Obligation.* Except as provided or contemplated herein, and subject to applicable state, federal, and/or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), Governmental Entities shall not disclose Vendor's Confidential Information to a Third Party without the prior written consent of Vendor.
- 10.2.2. *Destruction or Return of Vendor's Confidential Information.* On termination or expiration of this Agreement or applicable Purchasing Instrument, the applicable Governmental Entity shall, except to the extent otherwise required by applicable laws, rules, procedures, or applicable record retention requirements, return or destroy, at Vendor's option, all of Vendor's Confidential Information (excluding items subject to any continuing licenses inuring to the benefit of the applicable Governmental Entity hereunder or that are required for use of any Deliverables, in each case as provided herein).
- 10.2.3. *Compelled Disclosures.* Notwithstanding and in addition to the foregoing, Governmental Entities may disclose Vendor's Confidential Information:
  - 10.2.3.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative or regulatory processes;

- 10.2.3.2. Pursuant to any applicable laws, rules, or regulations;
- 10.2.3.3. If the applicable Governmental Entity determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
- 10.2.3.4. If Vendor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any of Vendor's Confidential Information as permitted above, a Governmental Entity shall provide reasonable notice to Vendor of the circumstances giving rise to such disclosure sufficient to permit Vendor to contest such disclosure.

- 10.3. Open Records and Electronic Discovery Requests and Record Retention. Vendor will, upon the applicable Governmental Entity's request and within any time period specified by the applicable Governmental Entity, take all actions reasonably 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 endeavor to 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 reasonably necessary to ensure Customer Data is stored and maintained its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Vendor will, upon the applicable Governmental Entity's request, take all actions reasonably requested by the Governmental Entity to assist it in complying with any federal, state, or local record retention requirements, policies, procedures, or other requirements.
- 10.4. Non-Exclusive Equitable Remedy. Each Party acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or Third Parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party, including any Governmental Entity, will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section will constitute a material breach of this Agreement and be grounds for immediate termination of the applicable Purchasing Instrument in the exclusive discretion of the non-breaching Party.

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

- 11.1. Data Protection. In addition to any other terms or conditions herein, and solely to the extent Vendor stores, processes, transmits, retains, or otherwise maintains Customer Data on a Governmental Entity's behalf, Vendor, Vendor Contractors, and Vendor

Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:

- 11.1.1. Implement and maintain reasonable and appropriate administrative, technical, and physical security measures to safeguard against unauthorized access, disclosure, or theft of Customer Property. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53 Revision 4 and ISO27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard its own Confidential Information of a like importance. Such securities measures, to the extent applicable, shall comply with, and shall enable the applicable Governmental Entity to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, ordinances, codes, regulations, orders, and I.T. Governance Documents related to such security measures or other security, privacy, or safeguarding requirements.
- 11.1.2. All Customer Data shall be encrypted at rest and in transit with controlled access. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor is responsible for encryption of Customer Data. Additionally, Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless the applicable Governmental Entity approves in writing the storage of Customer Data on a Vendor portable device that does not satisfy these standards.
- 11.1.3. Storage, processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America. Vendor shall not allow Vendor Personnel to store, process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices that are used and permanently stored or backed up at all times only in the continental United States of America.
- 11.1.4. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support. Vendor may not provide technical user support on a 24/7 basis using a Follow the Sun model.
- 11.2. Additional Hosting Terms. In addition to other terms herein (including Section 10 and all of this Section 11) that would be applicable to hosting, infrastructure, other “as a service” delivery models, or other similar services, and solely to the extent Vendor stores, retains, or otherwise maintains Customer Data on a Governmental Entity’s behalf, the following shall apply:
  - 11.2.1. *Import and Export of Data.* To the extent Customer Data is stored, retained, or otherwise maintained in electronic format in connection with any hosting, infrastructure, or other similar Services, the applicable Governmental Entity or its Authorized Contractors shall have the ability to import or export data or information, including Customer Data, in whole or in part to or from such services, at no charge, and in such formats as may be acceptable to the

Governmental Entity, without interference from Vendor. In the event a Governmental Entity is unable to successfully import or export data and information in whole or in part, Vendor shall assist the Governmental Entity in doing so at no charge. As it relates to the export of such data and information, Vendor shall provide to or ensure the applicable Governmental Entity has obtained an export of any requested data or information within one (1) day of any request in the format specified by the Governmental Entity.

11.2.2. *Retention of Customer Data.* Vendor agrees that in connection with any termination or expiration of this Agreement, Vendor shall not take any action to intentionally erase any Customer Data until otherwise directed by the applicable Governmental Entity in accordance with Section 10.1.2.

11.2.3. *Compliance/Audits.*

11.2.3.1. Compliance. Annually throughout the term, Vendor shall obtain and provide OCIO, and any Governmental Entity upon request, at no additional cost:

11.2.3.1.1. An independent, Third-Party certificate of audit certifying that the Services/System complies with NIST 800-53, Revision 4 controls;

11.2.3.1.2. An ISO/IEC 27001:2005 certification;

11.2.3.1.3. Test or assessment results of an independent, Third-Party assessment of application scans using the Open Web Application Security Project (OWASP) Top Ten List;

11.2.3.1.4. Test results of a penetration test conducted by an independent, Third-Party; and

11.2.3.1.5. A copy of Vendor's annual SOC 2 type 2 report (for all Trust Services Principles); and

11.2.3.1.6. A Vendor produced remediation plan resulting from items 11.2.3.1.1 through 11.2.3.1.5, inclusive.

11.2.3.2. Ongoing Security Testing. Vendor will periodically test its systems for potential areas where security could be breached. During the term, to the extent Vendor engages a Third Party auditor to perform an SSAE 16 of Vendor's operations, information security program, and/or disaster recovery/business continuity plan, Vendor shall promptly furnish a copy of the test report or audit report to OCIO. In addition, Vendor shall disclose its non-proprietary security processes and technical limitations to OCIO to enable OCIO to identify compensating controls necessary to adequately safeguard and protect Customer Data. For example, Vendor shall disclose its security processes with respect to virus checking and port sniffing to OCIO.

- 11.2.3.3. Security Audit by OCIO. During the term, OCIO or its Authorized Contractor(s) may perform security audits/scans of Vendor's environment, including unannounced penetration and security tests. Any Governmental Entity's regulators (and any federal agencies providing grant funds used to pay for such Deliverables, in whole or in part) shall have the same right upon request. Vendor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.
- 11.2.3.4. Access to Security Logs and Reports. Vendor shall provide security logs and reports to OCIO in a mutually agreeable format upon request. Such reports shall include at least latency statistics, user access summaries, user access IP address summaries, user access history and security logs for all State files related to the underlying agreement.
- 11.2.4. *Backup and Recovery.* Except as otherwise set forth in a Purchasing Instrument, Vendor is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within two (2) hours at any point in time. Additionally, unless otherwise provided in a Purchasing Instrument, Vendor shall store a backup of Customer Data in an off-site "hardened" facility no less than daily, maintaining the security of Customer Data, and consistent with the security requirements set forth in this Section. To the extent applicable, any backups of Customer Data shall not be considered in calculating storage used by any Governmental Entity.
- 11.3. Personnel Safeguards. In addition to any other terms or conditions herein, and solely to the extent Vendor or Vendor Subcontractors provide professional or managed services, or otherwise stores, processes, transmits, retains, or otherwise maintains Customer Data on a Governmental Entity's behalf, Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:
- 11.3.1. *Background Checks.*
- 11.3.1.1. Floor. Vendor shall conduct nationwide criminal background checks on Vendor Personnel and shall not utilize any such personnel in the performance of this Agreement who have been convicted of any crime of dishonesty, including criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty.
- 11.3.1.2. Additional Screening. Governmental Entities reserve the right to subject Vendor Personnel to additional background checks at any time prior to or during any engagement. Such background checks may include a work history, financial review, request for criminal history data, or local or state criminal history check, national criminal history check through the Federal Bureau of



Investigation (“FBI”), or other background check requirement imposed by law, rule, regulation, order, or policy. Vendor Personnel may be required to authorize the release of the results of criminal history checks, including those through the FBI, to one or more Governmental Entities, including OCIO. Such background checks may be conducted by the applicable Governmental Entity or its Authorized Contractor. A Governmental Entity may also require Vendor to conduct a work history or financial review of Vendor Personnel. Vendor shall provide Governmental Entities with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by Vendor Personnel.

- 11.3.1.3. Vendor shall be responsible for payment of all costs associated with any and all background checks to which Vendor Personnel are subjected, regardless of whether such background checks are conducted by Vendor or a Governmental Entity or its Authorized Contractor.
- 11.3.2. *Right to Remove Individuals.* Should a Governmental Entity be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Vendor Personnel, the Governmental Entity may request the replacement of such Vendor Personnel (“**Replacement Request**”). The Replacement Request shall be in writing and upon receipt of the request, Vendor shall make reasonable efforts to furnish a qualified and acceptable replacement within fifteen (15) business days. If the applicable Governmental Entity, in its sole discretion, determines Vendor personnel pose a potential security risk and notifies Vendor of such security risk in its Replacement Request, Vendor shall immediately remove such individual; any replacement furnished by Vendor in connection with such a request may not perform or provide Deliverables to the applicable Governmental Entity unless and until the applicable Governmental Entity gives its consent to Vendor’s use of such replacement. Vendor shall notify OCIO immediately upon receiving a Replacement Request from a Governmental Entity and promptly provide a copy of such Replacement Request to OCIO.
- 11.3.3. *Security Awareness Training.* Vendor shall promote and maintain an awareness of the importance of securing Customer Property among Vendor Personnel.
- 11.3.4. *Separation of Job Duties.* Vendor shall diligently monitor and enforce separation of job duties, require all Vendor Contractors and Vendor Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Property to those Vendor Personnel to which such access and knowledge is absolutely necessary to provide Deliverables hereunder.
- 11.3.5. *Non-disclosure/Confidentiality Agreements.* Vendor Personnel may be required to sign a Governmental Entity’s standard confidentiality or non-

disclosure agreement(s), or other confidentiality or non-disclosure agreement(s) as may be required by applicable law, rule, regulation, or policy.

11.4. Security Breaches. In addition to any other terms or conditions herein, and solely to the extent Vendor stores, processes, transmits, retains, or otherwise maintains Customer Data on a Governmental Entity's behalf, Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:

11.4.1. *Reporting.* Vendor will report to the applicable Governmental Entity and OCIO within two (2) hours of Vendor's discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to the applicable Governmental Entity and OCIO within forty-eight (48) hours of discovery or notification of the actual or suspected Security Breach. Such written confirmation shall include an explanation of the nature of and circumstances surrounding such actual or suspected Security Breach.

11.4.2. *Investigations in Response to Actual or Suspected Breach.* Vendor agrees, at its sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the applicable Governmental Entity and OCIO in resolving and mitigating any damage from such actual or suspected Security Breach at Vendor's sole cost. At no additional cost to the applicable Governmental Entity or the State of Iowa, Vendor will fully cooperate with the applicable Governmental Entity, OCIO, and the Authorized Contractors of either of the foregoing in investigating such actual or suspected Security Breach, including reviewing and assisting in reviewing system, application, and access logs, conducting and assisting in conducting forensic audits of relevant systems, imaging and assisting in imaging relevant media, and making personnel available for interview. On notice of any actual or suspected Security Breach, Vendor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. Vendor will deliver to the applicable Governmental Entity and OCIO a root cause assessment and future incident mitigation plan, and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. Vendor agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless required by law (or pursuant to advice of counsel) or the applicable Governmental Entity specifically requests in writing Vendor do so.

11.4.3. *Additional Remedies in the Event of Actual Breach.* In the event a Security Breach involving or relating to Customer Data has occurred, Vendor shall fully cooperate with the applicable Governmental Entity and OCIO in fully rectifying/responding to such Security Breach, including notifying all of the Governmental Entity's affected users. The applicable Governmental Entity shall determine, in its sole discretion, the content and means of delivery of

any such notifications. Notwithstanding any provision in this Agreement or any other related agreement to the contrary, Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (including the reasonable value of time of the Iowa Attorney General's Office or the costs, expenses and attorney fees of other counsel retained by the State or any other Governmental Entity) related to, arising out of, or incurred by or on behalf of any Governmental Entity as a result of, any Security Breach to the extent caused by Vendor or Vendor Personnel, including the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); opening and closing accounts, printing new checks, embossing new cards; forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all other costs associated with corrective or other actions that are taken to mitigate or address the Security Breach. Vendor will reimburse or pay to the applicable Governmental Entity all such expenses, fees, damages, and all other amounts within fifteen (15) business days of the date of any written demand or request delivered to Vendor.

- 11.5. Business Continuity/Disaster Recovery. In addition to any other terms or conditions herein, and solely to the extent Vendor stores, processes, transmits, retains, or otherwise maintains Customer Data on a Governmental Entity's behalf, Vendor, Vendor Contractors, and Vendor Personnel shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, Vendor, Vendor Contractors, and Vendor Personnel shall comply with the following:

11.5.1. Creation, Maintenance and Testing. Vendor shall maintain a Business Continuity and Disaster Recovery Plan for all Services provided hereunder ("**Plan**"), and implement such plan in the event of any unplanned interruption of Services. On or before the effective date, Vendor shall provide OCIO and other applicable Governmental Entities with a copy of Vendor's current Plan, revision history, and any reports or summaries relating to past testing of the Plan. Vendor shall actively test, review, and update the Plan on at least an annual basis using American Institute of Certified Public Accountants standards and other industry best practices as guidance. Vendor shall promptly provide OCIO and other applicable Governmental Entities with copies of all reports and/or summaries resulting from any testing of the Plan and with copies of all such updates to the Plan. Throughout the Term, Vendor shall maintain disaster avoidance procedures designed to safeguard Customer Data and the accessibility and availability of Services. Additional disaster recovery/business continuity requirements may be set forth in individual Purchasing Instruments.

11.5.2. Activation of Plan. Vendor shall immediately notify OCIO and other applicable Governmental Entities of any disaster or other event in which the

Plan is activated. If Vendor fails to reinstate Services within the time periods set forth in the Plan, in addition to any other remedies available to OCIO or other Governmental Entities hereunder, OCIO may immediately terminate this Agreement and other applicable Governmental Entities may terminate a Purchasing Instrument as a non-curable default under Section 9.1. Without limiting Vendor's obligations under this Agreement, whenever a disaster causes Vendor to allocate limited resources between or among Vendor's customers, Governmental Entities procuring Deliverables hereunder shall receive at least the same treatment as comparable Vendor customers with respect to such limited resources. The provisions of Section 12.25 (Force Majeure) shall not limit Vendor's obligations under this Section. Further, nothing in this Section shall be construed as in any way limiting Vendor's obligations elsewhere in this Agreement or any rights or remedies available to any Governmental Entity.

- 11.6. General Requirement. Vendor shall ensure that Vendor, Vendor Contractors, Vendor Personnel, Software, or any System provided hereunder or used or deployed by Vendor in provisioning Services hereunder shall generally comply with, and enable the applicable Governmental Entity to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, ordinances, codes, regulations, orders, and I.T. Governance Documents, including those related to security, privacy, or safeguarding requirements.

## 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 an applicable Governmental Entity making purchases hereunder, such as a Business Associate Agreement (“**BAA**”), contract language for technology services under IRS Publication 1075, or Criminal Justice Information System (“**CJIS**”) Security Addendum, or any other non-disclosure or confidentiality agreements in connection with this Agreement or any related agreement deemed necessary by the applicable Governmental Entity (“**Ancillary Agreement(s)**”). Such Ancillary Agreements shall be attached hereto as an **Attachment D** as Special Terms and Conditions hereto and incorporated by reference as if fully set forth herein. Ancillary Agreements may be updated from time to time as necessary, and upon the mutual consent of the Parties.
- 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. Governmental Entities may require Vendor or Vendor Contractors to conduct E-Verify employment-eligibility verifications of Vendor Personnel performing or providing Deliverables hereunder. Vendor shall be responsible for all costs associated with the E-Verify process, and shall provide the applicable Governmental Entity with the results of this process in a mutually agreeable form and manner in advance of any engagement hereunder.
- 12.3. No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Vendor shall not make any media release or other public announcement relating to or referring to this Agreement or a Purchasing Instrument without OCIO's or the applicable Governmental Entity's prior written

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

- 12.4. Independent Contractor. Vendor is an independent contractor performing services for Governmental Entities.
- 12.4.1. Vendor, Vendor Contractors, and Vendor Personnel shall not hold itself out as an employee or agent of the any Governmental Entities.
- 12.4.2. Except as otherwise 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 Deliverables hereunder.
- 12.4.3. Vendor Personnel are not eligible for and Vendor shall ensure Vendor Personnel never claim they are eligible for or otherwise entitled to any State employee benefits, including retirement benefits, insurance coverage, or the like.
- 12.4.4. Vendor Personnel shall not be considered employees of any Governmental Entity for any purpose, including for federal or State tax purposes. Governmental Entities shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.
- 12.4.5. Governmental Entities shall have no right or authority to direct or control Vendor Personnel with respect to the performance or provisioning of Deliverables under this Agreement, or with respect to any other matter, except as otherwise provided by this Agreement or a Purchasing Instrument. Governmental Entities are interested only in the results to be achieved by Vendor under this Agreement; the manner and method of performing and providing all Deliverables under this Agreement shall be under the exclusive control of Vendor, in accordance with the terms of this Agreement.
- 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 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 any Governmental Entity making purchases hereunder.

- 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 Deliverables hereunder shall satisfy the terms and conditions of this Agreement and any Purchasing Instrument(s) executed hereunder. The Parties acknowledge and agree that Governmental Entities 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 any Governmental Entity; shall clearly state in any and all communications related to the performance or provisioning of Deliverables hereunder that they are employees of Vendor or Vendor Contractor, and not employees of the applicable 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 OCIO and Vendor. Both Parties must execute all amendments to this Agreement in writing.
- 12.6. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the OCIO, Vendor, other Governmental Entities making purchases hereunder, and their respective successors and permitted assigns.
- 12.7. Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to any Governmental Entity, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's designated agent. Vendor appoints **C T Corporation System, 400 East Court Avenue, Suite 110, Des Moines, Iowa 50309** as its agent to receive service of process. If for any reason Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide OCIO and any

Governmental Entities making purchases hereunder with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by OCIO and the applicable Governmental Entity. Nothing in this provision will alter the right of OCIO or any other Governmental Entity to serve process in any other manner permitted by law. This Section shall survive termination of this Agreement.

- 12.8. 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 OCIO may assign, transfer, or convey this Agreement, in whole or in part, to any Governmental Entity that succeeds OCIO's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by OCIO to which the Deliverables relate. Likewise, individual Purchasing Instruments may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other Party, except that the applicable Governmental Entity may assign, transfer, or convey a Purchasing Instrument, in whole or in part, to any Governmental Entity that succeeds the applicable Governmental Entity's duties thereunder or otherwise assumes responsibility for functions or duties currently assumed by that Governmental Entity to which the Deliverables relate. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall not be considered an assignment, provided that Vendor maintains (or the succeeding entity assumes, as applicable) Vendor's obligations hereunder. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of OCIO or the applicable Governmental Entity. Vendor further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Vendor under this Agreement.
- 12.9. Use of Third Parties. None of the Deliverables to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party, including Vendor Contractors, without the prior written consent of the applicable Governmental Entity. Such consent shall not be deemed in any way to provide for the incurrence of any additional obligation of a Governmental Entity, whether financial or otherwise. Any subcontract to which a Governmental Entity has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the applicable Governmental Entity may deem necessary. Vendor is solely liable for any and all payments that may be due to Vendor Contractors pursuant to any subcontract. Vendor shall indemnify and hold harmless the State, OCIO, and any Governmental Entity and their officers, directors, employees, officials, and agents from and against any and all Third Party claims, demands, liabilities, suits, actions, damages, losses, costs and expenses resulting from Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any Vendor Contractor. In addition, the State, OCIO, and any Governmental Entity is not responsible for any failure of any Vendor Contractors to pay any amounts that may be due Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. All subcontracts shall contain provisions which allow Governmental Entities making purchases hereunder to access the subcontractor's books,

documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Vendor Contractors. Any action of a Vendor Contractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

- 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. *See* Section 1.4 (Relationship between this Agreement and individual Purchasing Instruments) for the relationship between this Agreement and individual Purchasing Instruments executed between Vendor and Governmental Entities other than OCIO. In addition, no Governmental Entity shall be bound by any “shrink-wrap” agreement, “click-wrap” agreement, “browser-wrap” agreement, or “sneakwrap” agreement, or any other similar agreement that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against any Governmental Entity on the basis of draftsmanship or preparation thereof.
- 12.11. Supersedes Former Agreements.
- 12.11.1. This Agreement supersedes all prior Agreements, including the Old Contract, between the State of Iowa and Vendor for the Deliverables provided in connection with this Agreement.
- 12.11.2. To the extent Vendor or Vendor Contractors are performing or providing Deliverables under active Purchasing Instruments, Statements of Work, or other like instruments pursuant to a the Old Contract, Vendor’s performance or provisioning of Deliverables under such instruments shall transfer and continue under the terms and conditions of this Agreement, subject to contractual rights or obligations of either Party provided for in the Old Contract.
- 12.12. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the applicable Governmental Entity and Vendor, failure by a Governmental Entity or Vendor at any time to require performance by the other Party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the Parties hereto.
- 12.13. Notices. Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice (identified below) at the address of the Party to receive notice as it appears below or as otherwise provided for by proper notice



hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

**If to the State:**

**Attn:** Business Services Division Administrator

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Iowa Office of the Chief Information Officer

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Hoover State Office Building, Level B

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Des Moines, IA 50319

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**If to Vendor:**

**CSDC Inc.**

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**Attn:** Legal Department

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**804 Las Cimas Parkway, Suite 100  
Austin, Texas 78746**

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**legal@csdcsystems.com**

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

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

- 12.14. Cumulative Rights. The various rights, powers, options, elections, and remedies of OCIO, the State, and Governmental Entities provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed by law, and shall in no way affect or impair the right of OCIO, the State, and Governmental Entities to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by OCIO, the State, or any Governmental Entity of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 12.15. 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 each Party's performance of its obligations under this Agreement. Vendor shall ensure that all Vendor Contractors and Vendor Personnel providing Deliverables hereunder are responsive to the applicable Governmental Entity's requirements and requests in all respects.
- 12.17. 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 the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, and legal representatives.
- 12.19. Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, the auditor of any Governmental Entity making purchases hereunder or any authorized representative thereof, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require Vendor Contractors to agree to the same provisions of this section.
- 12.20. Headings or Captions and Terms. The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 12.21. Multiple Counterparts. This Agreement, and any documents executed in connection herewith (including individual Purchasing Instruments), may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement, and any documents executed in connection herewith (including individual Purchasing Instruments), so executed shall constitute an original.
- 12.22. Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any

kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.

- 12.23. Attachments/Order of Priority. The Parties agree that if an Addendum, Attachment, Rider, Schedule, Appendix, or Exhibit is attached hereto by the Parties, and referred to herein, then the same shall be deemed incorporated herein by reference.
- 12.24. 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; strikes; labor unrest; or supply chain disruptions. If delay results from a Vendor Contractor's conduct, negligence or failure to perform, Vendor shall not be excused from compliance with the terms and obligations of Vendor unless the Vendor Contractor is prevented from timely performance by a "force majeure" as defined in this Agreement. If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Governmental Entity adversely affected. The Party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other Party of the occurrence and reason for the delay. The Parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which Vendor's performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.
- 12.27. 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 OCIO, a Governmental Entity making purchases hereunder, or a designee of either of the foregoing to inspect

Vendors books and records at reasonable times in order to monitor and evaluate performance of this Agreement. All subcontracts shall contain provisions which allowing the same. In addition, Vendor agrees that OCIO or its designee may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or expiration of this Agreement to determine whether or not Vendor is complying with the terms of this Agreement and any related Purchasing Instruments. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by OCIO or its designee. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

- 12.29. Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. OCIO and the State are exempt from the payment of State sales and other taxes: [https://das.iowa.gov/sites/default/files/acct\\_sae/man\\_for\\_ref/forms/sales\\_tax\\_exempt\\_letter.pdf](https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf). Other Governmental Entities may be exempt from the payment of State sales and other taxes as well.
- 12.30. Title to Property. Title to all property, including Customer Property, furnished by a Governmental Entity to Vendor to facilitate the performance of this Agreement shall remain the sole property of that Governmental Entity. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the applicable Governmental Entity upon the earliest of completion, termination, cancellation of this Agreement or the applicable Purchasing Instrument, or at the applicable Governmental Entity's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided for in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all tangible property purchased by Vendor (i.e., equipment or hardware), for which Vendor has been reimbursed or paid by a Governmental Entity under this Agreement, shall pass to and vest in that Governmental Entity, except as otherwise provided in this Agreement; provided that, for the avoidance of doubt, any Software, Source Code, or other Confidential Information of Vendor contained or embodied in such tangible property shall be subject to the terms of the Licensing Addendum.
- 12.31. Exclusivity. This Agreement is not exclusive. During the term of this Agreement, OCIO or any Governmental Entity making purchases hereunder may obtain similar or identical Deliverables from other vendors.
- 12.32. Award of Related Agreements. Governmental Entities making purchases hereunder may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with Authorized Contractors who may be engaged by a Governmental Entity in connection with this Agreement, subject to the terms hereof. Vendor will ensure that any Vendor Contractors or Vendor Personnel will abide by this provision.
- 12.33. Sovereign Immunity. No Governmental Entity waives sovereign immunity or any other immunity available to it by entering into this Agreement and specifically retains and reserves the defense of sovereign immunity and all defenses available under State and

federal laws, rules, and regulations for any claim arising out of or related to this Agreement.

- 12.34. Assignment of Third Party Warranties. At a Governmental Entity's request, Vendor will assign to that Governmental Entity any and all existing and future warranties, indemnities, and other benefits obtained or available from the licensor of any Third Party Software or the manufacturer of any Third Party Equipment provided or otherwise furnished by Vendor, directly or indirectly, in connection with this Agreement.
- 12.35. Attorney's Fees and Expenses. In the event of any litigation, claim, or proceeding brought by either Party to enforce its rights hereunder, the prevailing Party will be entitled to seek its reasonable costs and expenses (including reasonable attorneys' fees, which, for the State, may include attorneys' fees incurred with respect to the State Attorney General's Office) incurred by such Party in connection with such litigation, claim, or proceeding.
- 12.36. Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property, including Customer Property, furnished by a Governmental Entity for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its reasonable efforts to prevent damage to all such property and shall, at the applicable Governmental Entity's request, restore damaged property to its condition prior to the damage at the sole expense of Vendor. In addition, at the applicable Governmental Entity's request, Vendor will reimburse the Governmental Entity for any loss or damage to such property caused by Vendor, Vendor Contractors, or Vendor Personnel. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of any Governmental Entity, including OCIO or the State. Vendor shall obtain the prior advance written approval from the Governmental Entity prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks, or intellectual property rights of any Governmental Entity.
- 12.37. Notification of Events. Vendor shall notify OCIO and any applicable Governmental Entity in writing if any of the events set forth in Section 9.1 occur that would authorize OCIO or the Governmental Entity to immediately terminate this Agreement or applicable Purchasing Instrument.
- 12.38. Conflicts of Interest. Vendor represents, warrants, and covenants that no relationship exists or will exist during the term of the Agreement between Vendor, Vendor Contractors, or Vendor Personnel, on the one hand, and any Governmental Entities making Purchases hereunder, on the other, that constitutes a conflict of interest or appearance of impropriety. 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 any conduct that would violate that chapter.
- 12.39. Use of this Agreement required for Participating Agencies/Compliance with State I.T. Standards, Policies, and Procedures.

- 12.39.1. Pursuant to Iowa Code sections 8B.21(1)(a) and 8B.24(3), which, respectively, authorize OCIO to “[a]pprov[e] information technology for use by agencies and other governmental entities,” and to “develop policies and procedures that apply to all information technology goods and services acquisitions, and . . . ensure the compliance of all participating agencies,” absent a waiver granted pursuant to Iowa Code section 8B.21(5) and corresponding implementing rules, Participating Agencies are required to use this Agreement for the purchase of the Deliverables available or described hereunder or other like or similar Deliverables. Participating Agencies must execute Purchasing Instruments hereunder if they wish to purchase Deliverables available or described hereunder or other like or similar Deliverables, and may not enter into separate or competing contracts or other agreements for the purchase of such Deliverables.
  
- 12.39.2. Failure of a Participating Agency to follow the above requirement or to comply with the Procurement Policy or any other I.T. Governance Document(s), in addition to any other remedies available under applicable law, rule, or regulation, may be barred from utilizing this Agreement or other agreements made available to Governmental Entities by OCIO. Upon a determination by OCIO that a Participating Agency has failed to comply with the requirements of this Section, the Procurement Policy, or any other applicable I.T. Governance Document, OCIO may notify Vendor that the Participating Agency is barred from executing any new Purchasing Instruments hereunder, and Vendor shall not execute any new Purchasing Instruments with the Participating Agency unless or until Vendor receives authorization from OCIO to do so.
  
- 12.39.3. Notwithstanding the foregoing, this provision shall not apply to the following entities, which may, to the extent permitted by applicable law, rule, regulation, or order, enter into separate or competing contracts for the purchase of the Deliverables available or described hereunder or other like or similar Deliverables:
  - 12.39.3.1. Any Governmental Entity, other than a Participating Agency;
  - 12.39.3.2. The office of the governor or the office of an elective constitutional or statutory officer;
  - 12.39.3.3. The general assembly, or any office or unit under its administrative authority;
  - 12.39.3.4. The judicial branch, as provided in Iowa Code section 602.1102;
  - 12.39.3.5. The state board of regents and institutions operated under its authority.

**13. Limitation of Liability.**

- 13.1. To the extent not prohibited by applicable laws, rules, and regulations: (i) in no event shall Vendor, Vendor Contractor, or Vendor Personnel be liable for any consequential,

incidental, indirect, special, or punitive damages; and (ii) the maximum liability of either party under this Agreement shall be one (1) times the Contract Value (Contract Value is defined as the aggregate total compensation to be paid by a Governmental Entity to Vendor under any given Purchasing Instrument); provided however under no circumstances shall the foregoing limitation apply to:

- 13.1.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;
  - 13.1.2. Claims related to death, bodily injury, or damage to real or personal property;
  - 13.1.3. Any contractual obligations of Vendor pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws; or confidential information;
  - 13.1.4. Any claims arising under provisions of the Agreement calling for indemnification of the State of Iowa or any Indemnitee for third-party claims against the State of Iowa for bodily injury to persons or for damage to real or tangible personal property caused by the Vendor's negligence or willful misconduct;
- 13.2. Nothing in this Agreement, including Section 13, shall be construed to waive any clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on recovery provided by law to the State or any agency, department, or official of the State.

[End of General Terms and Conditions

Page Intentionally Left Blank. Attachment A Follows.]

**Attachment A**  
Pricelist to GSA Contract Number GS-35F-0069U



## Attachment B

### LICENSING ADDENDUM Product Specific Exhibits

This Licensing Addendum is applicable to all Deliverables as further described in the Agreement. The Exhibits listed below are hereby incorporated by this reference as though fully set forth herein. Each Exhibit (or “**Product Specific Terms**”) states the license and support terms applicable to specific Deliverables, as follows:

Exhibit A:	On Premises Software License
Exhibit B:	Hosted Software Services
Exhibit C:	Support Terms
Exhibit D:	License Schedule

#### 1. DEFINED TERMS

For purposes of this Licensing Addendum, the following terms, when capitalized, have the meaning stated below. Terms not otherwise defined in this Licensing Addendum shall have the meaning given them in the General Terms and Conditions:

**Agreement** means, collectively, the State of Iowa and CSDC Master Software, Services, and Equipment Agreement, this Licensing Addendum, any documentation memorializing the terms of the agreement as identified on the Contract Declarations & Execution Page(s) and all other attachments to the Contract Declarations & Execution Page(s), the Purchasing Instrument(s), and any addenda, appendix, or exhibit attached to any of them.

**Business Day** means Monday through Friday 9:00 a.m. – 5:00 p.m. United States Central Time, excluding public holidays in the country whose laws govern the Agreement.

**CSDC** means the CSDC Affiliate identified in the Purchasing Instrument, or if none is identified, CSDC Inc., a Delaware corporation.

**Confidential Information** means all information disclosed by one party to the other party, on any media, whether before or after the effective date of the Agreement that: (i) the recipient should reasonably understand to be confidential, such as (A) for Purchaser, all Purchaser Information, and (B) for CSDC, unpublished prices and other terms of service, audit and security reports, product development plans, network configuration, vendors and other proprietary information or technology; or (ii) is marked or otherwise conspicuously designated as confidential. Information that is independently developed by a party without reference to the other's Confidential Information, or that becomes available to a party, other than through violation of this Agreement or applicable law, is not "Confidential Information" of the other party. Confidential Information includes information disclosed by making tangible objects or premises available for inspection.

**Documentation** means the general release version of the user and administrator materials and information describing the general release Software and Services. The term “Documentation” does not include any FAQ, Whitepapers, or marketing materials.

**Enhancement** means general release functional enhancements to the Software that CSDC includes as part of its standard Software license offering without additional charge.

**Hosted Software Services** means CSDC’s provision of remote access via the Internet to a dedicated instance of the Software, and Support for that dedicated instance.

**Maintenance** means Updates and Enhancements to the Software provided to Purchaser as part of a subscription for Hosted Services or as part of a Support Plan.

**Malware** means viruses, spyware, adware, or other unauthorized code or information that is designed to interrupt the normal use of the Software or the systems on which any part of the Software is installed, destroy or corrupt any data, or covertly transmit information regarding Purchaser or the Users to a third-party.

**Open Source Software License** means a software license that requires the licensee to make software available in source code form or license the software on a royalty free basis.

**Personal Data** means any information about an identified or identifiable natural person that is transmitted to, stored, or otherwise processed by CSDC to provide Services.

**Product** means, collectively, the licenses, Support Plans, and Hosted Software Services offered by CSDC on a general release basis, and purchased by Purchaser under a Purchasing Instrument.

**Purchaser** means the Governmental Entity making a purchase under this Agreement and as identified on the relevant Purchasing Instrument.

**Purchaser Information** means all data or information that is processed by Purchaser using the Software or that is processed by CSDC as part of providing Software Services, including Personal Data.

**Public Users** means the members of the public with whom Purchaser is authorized to interact under applicable statutes, regulations, or other government authorization, such as individuals or businesses seeking permits or licenses.

**Purchaser Users** means Purchaser’s personnel authorized by Purchaser to use the Software or the administrative features of the Services.

**Service** or **Services** means, collectively, Support, Hosted Software Services, Professional Services, and any other services provided by CSDC to Purchaser related to the subject matter of the Agreement.

**Software** means the CSDC software described in a Purchasing Instrument or made available for Purchaser’s or Public Users’ use in connection with the subject matter of a Purchasing Instrument, and related Documentation, but excluding any Third-Party Technology as defined below. For clarity, the term “Software” includes all of the following made available to Purchaser or Public Users by CSDC as part of a Support Plan, or otherwise: (i) Updates, Enhancements, and other modifications; (ii) any application programming interface (“**API**”) or other control plane, dashboard, or other interface; (iii) any online portal for the management of Purchaser’s account; and (iv) any analytics or other tools provided by CSDC for use with the Software or Services.

**Support** means technical assistance and Maintenance provided pursuant to Exhibit C, Support Terms.

**Third-Party Technology** means software or other technology that Purchaser licenses directly from the third-party licensor for use with the Software or Services provided by CSDC. Third-Party Technology includes technology that CSDC offers as a license reseller for the third party but that is covered by a separate end user license agreement between the licensor and Purchaser.

**Unsupported** has the meaning given in Section 5 (*Unsupported Software and Services*).

**Update** means bug fixes, error corrections, and minor changes to the Software.

## 2. SUPPORT

**2.1 Software Support.** CSDC will provide Support for On Premises Software License Products described on Exhibit A and for the Software elements of the Hosted Software Service described on Exhibit B in accordance with the terms stated in Exhibit C, *Support Terms*.

**2.2 Infrastructure Elements of Hosted Software Service.** If CSDC provides Hosted Software Services, then in addition to the Software Support described above, and, to the extent applicable, in Sections 10 (Confidentiality) and 11 (Security/Privacy, Business Continuity, and Disaster Recovery) of the General Terms and Conditions, CSDC will provide technical assistance for the infrastructure services element of the Product as described in Exhibit B (*Hosted Software Services*). CSDC does not provide any additional warranty or service level commitment in connection with the infrastructure elements of the Hosted Software Services but will pass through all warranty and/or service level commitments made by the infrastructure services provider as further described on Exhibit B or the applicable Purchasing Instrument.

**2.3 Additional Warranties.** CSDC makes the following additional warranties:

**2.3.1 Malware.** The Software will not include any Malware on delivery, and CSDC shall use reasonable commercial efforts to avoid introducing Malware to the Software or the systems on which the Software is installed..

**2.3.2 Infringement.** Purchaser's use of the Software as permitted by the Agreement will not infringe on any third-party patents, copyrights, trademark, trade secrets or other intellectual property right of a third person.

**2.3.3 Open Source Software.** Purchaser's use of the Software as permitted by the Agreement will not result in the licensing of any Purchaser software under an Open Source Software License unless otherwise expressly and conspicuously agreed in a Purchasing Instrument.

## 3. SOFTWARE LICENSE

**3.1 General License Terms.** The executable version of the Software is licensed to Purchaser on a non-exclusive basis solely for use in connection with the licensing, permitting, regulatory compliance, docket management, information requests, or other government activities that Purchaser is authorized by law to provide. The Software is licensed for a limited term, unless the applicable Purchasing Instrument expressly states that the license is "perpetual." For the avoidance of doubt, all licenses listed on the License Schedule attached hereto as Exhibit D are licensed for a perpetual term. The term of each license

is stated in the Purchasing Instrument or, if no term is stated, is one year. The license may not be assigned except as part of an assignment of the Agreement that is permitted by Section 12.8 of the General Terms and Conditions. Purchaser may permit the use of the Software only by Purchaser Users and Public Users and may not otherwise sublicense or permit the use of the Software by any other person. Unless stated in the Product Specific Terms or the Purchasing Instrument, the license is worldwide, subject to applicable export law. The license is subject to the following conditions and restrictions:

- (i) **Fee Metric.** Purchaser may not permit the use of the Software in excess of the applicable licensing metric, such as user “seats”;
- (ii) **High Risk Use.** Purchaser may not use the Software in any situation where failure or fault of the Software could lead to death or serious bodily injury of any person or damage to tangible property or environmental damage;
- (iii) **Reverse Engineering.** Purchaser may not reverse engineer, disassemble, or decompile the Software or attempt to discover any underlying algorithm or method embodied by the Software except to the extent applicable law permits such activity notwithstanding this limitation, and then only on advance written notice to CSDC of at least thirty (30) days;
- (iv) **Modifications.** Except as expressly authorized under a separate written agreement, Purchaser may not modify the Software, combine the Software with other software, or create any derivative works of the Software;
- (v) **Competing Services.** Purchaser may not use, and may not permit any person to use, the Software for the purpose of developing a competing software program or service; and
- (vi) **Performance Analysis.** Purchaser may not publish any benchmarking results or other performance analysis.

**3.2 Product Specific License Terms.** The license is subject to additional conditions and restrictions stated in Exhibit A (On Premises Software License) or Exhibit B (Hosted Software Services), as applicable.

**3.3 Evaluation, Proof of Concept.** If CSDC authorizes Purchaser to use the Software on an evaluation, “proof of concept,” or similar basis (with or without charge) (an “Evaluation License”), the following additional terms, conditions and restrictions apply unless otherwise expressly agreed in writing: (i) the license term is ninety (90) days and may be terminated by CSDC prior to expiration at any time on written notice, with or without cause; (ii) the Software may not be used to process or store production data or Personal Data; and (iii) the Software is “Unsupported” during the term of the Evaluation License.

**4. PRE-RELEASE TECHNOLOGY.** CSDC may invite Purchaser to use test, beta, pilot, limited release, developer preview, non-production, evaluation, or other pre-release software or services (“**Pre-Release Technology**”). Pre-Release Technology is provided **AS IS** and **AS AVAILABLE** without any representation or warranty whatsoever. CSDC is not required to provide support for Pre-Release Technology. Purchaser may not use Pre-Release Technology for production purposes unless it has written permission from CSDC. CSDC may discontinue Pre-Release Technology at any time in its sole discretion and delete all Purchaser Information associated with the Pre-Release Technology. CSDC may never offer a general release version of the Pre-Release Technology, or if it does, there may not be an

automatic update path from the Pre-Release version to the general release version. CSDC has no liability for any harm or damage arising from Purchaser's use of a Pre-Release Service.

**5. UNSUPPORTED SOFTWARE AND SERVICES.** If Purchaser asks CSDC to provide support for Software that has been modified by any person or entity other than Vendor, Vendor Contractors, or Vendor Personnel in accordance with the terms of the Agreement, CSDC may refuse, or may designate the non-standard Software, and any Services provided with respect thereto, as "Unsupported," in the Purchasing Instrument, support ticket or other agreement or correspondence (collectively "**Unsupported**" Software or Services). Unsupported Software and Services are not covered by warranties, service level agreements, security commitments, maintenance or support commitments, or indemnities, and may not be used to process or store Personal Data. If Purchaser requests assistance with Unsupported Software or Services, CSDC will provide good faith technical assistance using its available personnel who have generalized skill and training in information technology systems. Otherwise Unsupported Software or Services are provided **AS IS** and **AS AVAILABLE** with no representation or warranty whatsoever. CSDC is not responsible to Purchaser for any loss or damage arising from the provision of Unsupported Software or Services.

## **6. THIRD PARTY TECHNOLOGY**

**6.1 Disclaimers.** Third-Party Technology is not "Software" or "Services" under the terms of this Agreement and is Unsupported as provided in Section 5 (*Unsupported Software and Services*), even if CSDC purchases a license or subscription for Third-Party Technology on Purchaser's behalf. CSDC may provide limited technical assistance in connection with the interoperation of Third-Party Technology with its Software and Services, but the assistance is provided **AS IS** and **AS AVAILABLE**, and CSDC makes no commitment whatsoever with respect to the Third-Party Technology.

**6.2 Purchaser Provided Licenses.** If Purchaser provides any Third-Party Technology to CSDC for use in connection with the Software or Services, Purchaser represents and warrants to CSDC that it has the licenses and other authorizations from the third party that are necessary for the use contemplated by the Agreement. On CSDC's request, Purchaser will provide reasonable evidence of its compliance with this Section 6.2. Purchaser authorizes CSDC to cooperate with any reasonable request from the third party for information regarding Purchaser's compliance with the third party's license or other terms and conditions covering Third-Party Technology.

**6.3 Referrals to Third-Party Service Providers.** As a convenience to Purchaser, CSDC may identify unaffiliated third parties who perform technology management, migration, or other services useful to Purchaser. CSDC does not endorse any third party, and **makes no representation or warranty whatsoever regarding third parties it identifies for Purchaser's consideration.** Purchaser is responsible for investigating the third party's qualifications and skills. For the avoidance of doubt, this Section 6.3 does not apply to Vendor Contractors as defined in the Agreement.

**Exhibit A**  
**On Premises Software License**

- 1. Licensed Software.** The licensed software is the CSDC software product identified in the Purchasing Instrument and other software and information related to the software product that is defined as “Software” in Section 2 (Defined Terms) of the body of the Licensing Addendum.
- 2. License Metric.**
  - 2.1 Per User.** If the Software is licensed on a per user basis, then Purchaser must pay a license fee for each individual who has access to the administrative features of the Software (each a “seat”). A seat may not be used by more than one individual. A seat may be transferred from one individual user to another provided that the transfer is intended to be a permanent transfer and not a means of sharing a single seat. Purchaser must require each individual to establish a unique log in name and password. If user seats are licensed on a subscription basis for annual periods and Purchaser wishes to add seats during an annual period, Purchaser may purchase additional user seats for a pro-rated annual fee based on the number of partial or full months remaining in the then-current annual period, provided that Purchaser commits to purchasing a full annual subscription for the additional seats on the renewal of the annual period.
- 3. Warranty Period.** The warranty period for the Software is ninety (90) days beginning on the date of Final Acceptance as defined in the General Terms and Conditions.
- 4. Copies.** Purchaser may copy the Software as reasonably necessary for its licensed use and may make one backup copy for use in the event the production version of the Software becomes unavailable.
- 5. Delivery.** Unless otherwise expressly stated in the Purchasing Instrument, CSDC shall deliver the Software electronically by making the Software and enabling information available on CSDC’s Internet accessible download site.
- 6. Implementation, Configuration, Training.** CSDC will provide implementation, configuration, and training services as described in the Purchasing Instrument for the fees described in the Purchasing Instrument. Implementation, configuration and training services must be used within the time period specified in the Purchasing Instrument, or if no time period is stated, within 90 days from the delivery of the Software.

**End of Exhibit A to Attachment B**

## **Exhibit B**

### **Hosted Software Services**

- 1. Licensed Software.** The licensed software is the CSDC software product identified in the Purchasing Instrument and other software and information related to the software product that is defined as “Software” in this Licensing Addendum.
- 2. Hosted Subscription License.** CSDC will install the Software on computing infrastructure managed by a third-party infrastructure services provider, and Purchaser may use the Software on that infrastructure remotely via the Internet using remote access technology provided or approved in advance by the infrastructure services provider or CSDC (the “**Hosted Software Service**”). Purchaser may use the Hosted Software Service for the term stated in the Purchasing Instrument (the “**Subscription**”). Purchaser may make and distribute copies of the Documentation as reasonably necessary for the permitted use of the Hosted Software Service, but may not otherwise copy the Software.
- 3. Software Warranty Period.** The Warranty Period for the Software provided as part of the Hosted Software Service is ninety (90) days from the Service Commencement Date.
- 4. Support Plan.** Software Support is included with the Subscription at the Support Plan level indicated in the Purchasing Instrument.
- 5. Fee Metric.**
  - 5.1 Per User.** If the Software is licensed on a per user basis, then Purchaser must pay a license fee for each individual who has access to the administrative features of the Software (each a “seat”). A seat may not be used by more than one individual. A seat may be transferred from one individual user to another provided that the transfer is intended to be a permanent transfer and not a means of sharing a single seat. Purchaser must require each individual to establish a unique log in name and password. If user seats are licensed on an annual basis and Purchaser wishes to add seats during an annual period, Purchaser may purchase additional user seats for a pro-rated annual fee based on the number of partial or full months remaining in the then-current annual period, provided that Purchaser commits to purchasing a full annual subscription for the additional seats on the renewal of the annual period.
- 6. Third-Party Infrastructure.** Separate legal terms identified in the Purchasing Instrument may govern Purchaser’s use of the third-party infrastructure services. Specifically, but without limitation, the third party’s Acceptable Use Policy, or “AUP” may be applicable to Purchaser’s use of the Hosted Software Services. CSDC will pass through all availability and other service level commitments provided by the third party infrastructure provider, but makes no additional availability or other service level commitments for the infrastructure services provided by the third-party infrastructure services provider, except that it will obtain any credit that may be due under the terms of the third party’s service level agreement and will pass through the credit to Purchaser if one is issued by the third party.
- 7. Service Commencement.** CSDC will begin implementation of the Hosted Software Service at the time stated in the Purchasing Instrument. The subscription term begins on the date that CSDC has completed implementation, and enabled Purchaser’s remote administrative access to the deployed Hosted Software Service (the “**Service Commencement Date**”).

- 8. Reserved.**
- 9. Implementation, Configuration, Training.** CSDC will provide implementation, configuration, and training services as described in the Purchasing Instrument for the fees described in the Purchasing Instrument.
- 10. Software Service Restrictions.** Purchaser may not permit the use of the Hosted Software Service by any person other than the authorized Purchaser Users and Public Users or other authorized sublicensees as defined in the Agreement.

**End of Exhibit B to Attachment B**



## **Exhibit C**

### **Support Plans**

**Support.** CSDC will provide the Software maintenance and technical assistance in accordance with this the Support Policies described below.

- 1. Software Maintenance.** CSDC will provide Purchaser with those Software Updates created by CSDC for general release, to include extensions, modifications, drivers, service packs, service releases, application program plug-ins, applets and adaptors.
- 2. Technical Assistance.** CSDC will respond to requests for assistance and software corrections in accordance with its Support Policies described below.
- 3. All Licenses Must Be Supported.** If Purchaser purchases Support in connection with any Software license it must purchase Support for all licenses. If Purchaser add licenses during an annual Support period, Purchaser must purchase additional Support entitlements to cover the additional licenses.
- 4. Term, Renewals.** The initial Support term is stated in the Purchasing Instrument, or if no term is stated is one (1) year beginning on the delivery date of the Software license.
- 5. Fees.** Support fees are non-refundable except as expressly provided in the Agreement.
- 6. Support Tools.** Purchaser is not required to permit CSDC to use any remote access Support tools, but acknowledges that a refusal may delay or impair the effectiveness of the Support.
- 7. Support Exclusions.** CSDC has no obligation to provide Support for custom software or configurations unless otherwise agreed in a Purchasing Instrument. CSDC is not obligated to provide Support where the request is the result of any of the following (the “**Support Exclusions**”), but may do so, at its option: (i) failure to implement all Updates provided by CSDC; (ii) failure to use the Software in accordance with the applicable terms of the Agreement, the Documentation or reasonable written documentation provided by CSDC Support; or (iii) alterations of the Software or Hosted Software Services environment by anyone other than CSDC. Any CSDC Support provided in connection with a Support Exclusion is provided **AS IS**.

## CSDC Support Policies

### Support Portal

<http://www.csdcsystems.com/support/htm>. If the Support Portal is unavailable for any reason, you may submit requests via e-mail here: [support@csdcsystems.com](mailto:support@csdcsystems.com).

### Phone Support

1-888-661-1933 Ext. 2

### Support Hours

Monday to Friday (excluding Canadian Holidays) between 8:00 a.m. to 5:00 p.m. Eastern Time. If you are located in other time zones, support personnel will be available on call or by appointment from 8:00 a.m. to 5:00 p.m. local time. Support personnel will also be available on call or by appointment on days when CSDC offices are closed for holidays. you may submit support issues 24/7 via online support software and email.

**Severity Levels.** CSDC will provide problem diagnosis for the Software and, where possible, will supply corrections for problems that CSDC diagnoses as defects in the Software. CSDC will perform these services in a timely manner consistent with the urgency of the situation. Incidents that can be characterized as defects are classified according to the following criteria

- **Critical** - A defect, for which there is no workaround immediately available, which affects the standard business flow such that the business task cannot be accomplished on multiple workstations, for multiple projects. The impact of the reported deficiency is such that the you is unable to either use the Software or reasonably continue work using the Software.
- **Major** - Important features of the Software are unavailable, but a workaround is available or non-essential features of the Licensed Software are unavailable with no alternative solution. There is a significant impact to the you, but the software can be used to complete the standard business flow.
- **Medium** - Important features of the Software are unavailable, but a workaround is available or non-essential features of the Software are unavailable with no alternative solution. The you impact is the minimal loss of operational functionality or implementation resources.
- **Minor** - Defects that do not influence the business flow. The implementation or use of the Software by the you is continuing and there is no significant impact on productivity.

You must include in each request for support a reasonably detailed description of the issue, any Support entitlement code, and a severity designation. You must provide de additional information reasonably requested by CSDC, including information necessary to re-produce any error or other issue.

### Historic Version Support

CSDC will provide support for each major version for at least thirty-six (36) months from the date of its general release, and shall notify you of the end of support date at least twelve (12) months in advance. Minor releases within each major version are supported for the life of the major version.

**Technical Contacts**

You may name up to two (2) technical contacts in the support portal. You may change your technical contacts on 5 days prior written notice to CSDC. CSDC may respond to support requests from individuals other than your named technical contacts, but is not required to. If more than one Technical Contact calls with the same issue, CSDC will respond to the first contact only.

**End of Exhibit C to Attachment B**

**Exhibit D  
License Schedule**

**Summary:**

License Recap - February 2019						
Total Concurrent = 135 + others (EAI, Mobile, PP, Review) = (IDB Dental = 8, IBM Medicine = 25, IBON Nursing = 16+OutlookAddIns =0, IWD Workforce Development = 15+7 Dec 4, 2015, IBPL Public Health = 16, PLB Commerce = 6, DCP Direct Care = 2, IDPH Public Health = 40 + 3 EAI + 1 Mobile + 110 Review, PublicPortal = 6, EAI = 6)						
Agency	Concurrent User Licenses	EAI	Mobile	Review	Public Portal	EAI
IDB	8					
IBM	25					
IBON	16					
IWD	22					
IBPL	16					
PLB	6					
DCP	2					
IDPH	40	3				
IDPH			1	110	6	6
<b>Total</b>	<b>135</b>	<b>3</b>	<b>1</b>	<b>110</b>	<b>6</b>	<b>6</b>

**License Breakdown by Agency Follows**

<b>Iowa Workforce Development (IWD)</b>				
<b>License Type</b>	<b>Shared/Not Shared</b>	<b># of Users</b>	<b>License fee</b>	<b>Maintenance \$</b>
AMANDA Professional Licenses	Shared	N/A	N/A	N/A
AMANDA Permits	Shared	N/A	N/A	N/A
AMANDA Batch Scheduler	Shared	N/A	N/A	N/A
AMANDA Public Portal	Shared	N/A	N/A	N/A
AMANDA Public Portal-Development	Shared	N/A	N/A	N/A
AMANDA Public Portal-eCommerce Connector	Shared	N/A	N/A	N/A
AMANDA Rapid Renewal	Shared	N/A	N/A	N/A
AMANDA Multi-Merge	Shared	N/A	N/A	N/A
AMANDA Executive Monitor-Server	Shared	N/A	N/A	N/A
AMANDA Requests for Services (RFS)	Shared	N/A	N/A	N/A
AMANDA Enterprise Application Interface (EAI)	Shared	N/A	N/A	N/A
AMANDA Mobile Server	Shared	N/A	N/A	N/A
AMANDA Enhanced Inspection Module	Shared	N/A	N/A	N/A
AMANDA Interactive Voice Response (IVR)	Not Shared	N/A	N/A	N/A
AMANDA EAI Connections (1 Interface)	Not Shared	1	N/A	N/A
AMANDA Back Office User Licenses (15)	Not Shared	15	N/A	N/A
AMANDA Audit User Licenses (15)	Not Shared	15	N/A	N/A
AMANDA Mobile Licenses (13)	Not Shared	13	N/A	N/A
<b>Original amount per agreement</b>				<b>\$ 19,260.00</b>
<b>Current amount (1 Aug 2018 - 31 July 2019)</b>			<b>\$ -</b>	<b>\$ 21,677.30</b>
Additional Licenses		7	\$ 305.54	\$ 2,138.77
<b>Total</b>		<b>22</b>		<b>\$ 23,816.07</b>

Iowa Board of Medicine (IBM)				
License Type	Shared/Not Shared	# of Users	License fee	Maintenance \$
AMANDA Professional Licenses	Shared	1	N/A	N/A
AMANDA Batch Scheduler	Shared	1	N/A	N/A
AMANDA Public Portal	Shared	1	N/A	N/A
AMANDA Public Portal-Development	Shared	1	N/A	N/A
AMANDA Public Portal-eCommerce Connector	Shared	1	N/A	N/A
AMANDA Rapid Renewal	Shared	1	N/A	N/A
AMANDA Multi-Merge	Shared	1	N/A	N/A
AMANDA Executive Monitor-Server	Shared	1	N/A	N/A
AMANDA Requests for Services (RFS)	Shared	1	N/A	N/A
AMANDA Enterprise Application Interface (EAI)	Shared	1	N/A	N/A
AMANDA Interactive Voice Response (IVR)	Not Shared	N/A	N/A	N/A
AMANDA Executive Monitor-Named Licenses	Not Shared	1	N/A	N/A
AMANDA Back Office User Licenses (13+12=25)	Not Shared	25	N/A	N/A
AMANDA Audit User Licenses (13+12=25)	Not Shared	25	N/A	N/A
<b>Sub-Total</b>				<b>\$ 17,663.50</b>
AMANDA Back Office User Licenses (12@ \$521 ea.)	N/A	12	\$ 521.00	\$ 6,252.00
AMANDA Audit User Licenses (12@ no charge)	N/A	12	\$ -	\$ -
<b>Original amount per agreement</b>			<b>\$ 521.00</b>	<b>\$ 23,915.50</b>
<b>Current amount (1 Dec 2018 - 30 Nov 2019)</b>	<b>Total</b>	<b>25</b>		<b>\$ 26,133.11</b>

<b>Iowa Board of Nursing (IBON)</b>				
<b>License Type</b>	<b>Shared/Not Shared</b>	<b># of Users</b>	<b>License fee</b>	<b>Maintenance \$</b>
AMANDA Professional Licenses	Shared	1	N/A	N/A
AMANDA Batch Scheduler	Shared	1	N/A	N/A
AMANDA Public Portal	Shared	1	N/A	N/A
AMANDA Public Portal-Development	Shared	1	N/A	N/A
AMANDA Public Portal-eCommerce Connector	Shared	1	N/A	N/A
AMANDA Rapid Renewal	Shared	1	N/A	N/A
AMANDA Multi-Merge	Shared	1	N/A	N/A
AMANDA Executive Monitor-Server	Shared	1	N/A	N/A
AMANDA Requests for Services (RFS)	Shared	1	N/A	N/A
AMANDA Enterprise Application Interface (EAI)	Shared	1	N/A	N/A
AMANDA Interactive Voice Response (IVR)	Not Shared	1	N/A	N/A
AMANDA Executive Monitor-Named Licenses	Not Shared	3	N/A	N/A
AMANDA Back Office User Licenses (11+5=16)	Not Shared	16	N/A	N/A
AMANDA Audit User Licenses (11+5=16)	Not Shared	16	N/A	N/A
<b>Sub-Total</b>				<b>\$ 15,487.74</b>
AMANDA Back Office User Licenses (5@ \$365 ea.)	N/A	5	\$ 365.00	\$ 1,825.00
AMANDA Audit User Licenses (5@ no charge)	N/A	5	\$ -	\$ -
AMANDA Executive Monitor-Named Licenses (5@ \$300 ea.)	N/A	5	\$ 300.00	\$ 1,500.00
AMANDA Scan Station	N/A	1.00	\$ 500.00	\$ 500.00
<b>Original amount per agreement</b>				<b>\$ 19,312.74</b>
<b>Current amount (1 Dec 2018 - 30 Nov 2019)</b>	<b>Total</b>	<b>16</b>		<b>\$ 21,103.55</b>

Iowa Bureau of Professional Licensure (IBPL)				
License Type	Shared/Not Shared	# of Users	License fee	Maintenance \$
AMANDA Professional Licenses	Shared	N/A	N/A	N/A
AMANDA Batch Scheduler	Shared	N/A	N/A	N/A
AMANDA Public Portal	Shared	N/A	N/A	N/A
AMANDA Public Portal-Development	Shared	N/A	N/A	N/A
AMANDA Public Portal-eCommerce Connector	Shared	N/A	N/A	N/A
AMANDA Rapid Renewal	Shared	N/A	N/A	N/A
AMANDA Multi-Merge	Shared	N/A	N/A	N/A
AMANDA Executive Monitor-Server	Shared	N/A	N/A	N/A
AMANDA Requests for Services (RFS)	Shared	N/A	N/A	N/A
AMANDA Enterprise Application Interface (EAI)	Shared	N/A	N/A	N/A
AMANDA Interactive Voice Response (IVR)	Not Shared	N/A	N/A	N/A
AMANDA Executive Monitor-Named Licenses	Not Shared	N/A	N/A	N/A
AMANDA EAI Connections (19 Interfaces)	Not Shared	N/A	N/A	N/A
AMANDA Back Office User Licenses (6+2=8 users)	Not Shared	8	N/A	N/A
AMANDA Audit User Licenses (6+2=8 users)	Not Shared	8	N/A	N/A
<b>Sub-Total</b>				<b>\$ 21,064.00</b>
AMANDA Back Office User Licenses (2 users @ 244)	N/A	2	\$ 244.00	\$ 488.00
AMANDA Audit User Licenses (2 users)	N/A	2	\$ -	\$ -
AMANDA Certification	N/A	0	\$ -	\$ 2,200.00
AMANDA Enterprise Authentication Adaptor	N/A	0	\$ -	\$ 5,000.00
AMANDA Scan Station	N/A	0	\$ -	\$ 500.00
<b>Original amount per agreement</b>				<b>\$ 29,252.00</b>
<b>Current amount (1 Jul 2018 - 30 June 2019)</b>			\$ -	\$ 32,923.38
Additional Licenses		2	\$ 552.73	\$ 1,105.46
<b>Total</b>		<b>12</b>		<b>\$ 34,028.84</b>



<b>Iowa Dental Board (IDB)</b>				
<b>License Type</b>	<b>Shared/Not Shared</b>	<b># of Users</b>	<b>License fee</b>	<b>Maintenance \$</b>
AMANDA Professional Licenses	Shared	N/A	N/A	N/A
AMANDA Batch Scheduler	Shared	N/A	N/A	N/A
AMANDA Public Portal	Shared	N/A	N/A	N/A
AMANDA Public Portal-Development	Shared	N/A	N/A	N/A
AMANDA Public Portal-eCommerce Connector	Shared	N/A	N/A	N/A
AMANDA Rapid Renewal	Shared	N/A	N/A	N/A
AMANDA Multi-Merge	Shared	N/A	N/A	N/A
AMANDA Executive Monitor-Server	Shared	N/A	N/A	N/A
AMANDA Requests for Services (RFS)	Shared	N/A	N/A	N/A
AMANDA Enterprise Application Interface (EAI)	Shared	N/A	N/A	N/A
AMANDA Interactive Voice Response (IVR)	Not Shared	N/A	N/A	N/A
AMANDA Executive Monitor-Named Licenses	Not Shared	N/A	N/A	N/A
AMANDA Back Office User Licenses (5+3=8 users)	Not Shared	8	N/A	N/A
AMANDA Audit User Licenses (5+3=8 users)	Not Shared	8	N/A	N/A
<b>Original amount per agreement</b>				<b>\$ 14,473.59</b>
<b>Current amount (1 July 2018 - 30 June 2019)</b>	<b>Total</b>	<b>8</b>		<b>\$ 16,290.15</b>

<b>Iowa Dental Board (IDPH (ADPER &amp; EH))</b>				
<b>License Type</b>	<b>Shared/Not Shared</b>	<b># of Users</b>	<b>License fee</b>	<b>Maintenance \$</b>
AMANDA Enterprise Application Interface (EAI Connectins) - 3 Interface	Not Shared	3		\$ 3,090.00
AMANDA Address Verification	Not Shared			\$ 1,648.00
AMANDA Back Office User Licenses - 40	Not Shared	40	\$ 315.18	\$ 12,607.20
<b>Original amount per agreement</b>				<b>\$ 17,345.20</b>
<b>Current amount (1 July 2018 - 30 June 2019)</b>		<b>40 + 3</b>		<b>\$ 17,345.20</b>

**End of Exhibit D to Attachment B**

## Attachment C Insurance

The following Special Terms and Conditions/Ancillary Agreement are part of and incorporated into the State of Iowa and CSDC Master Software, Services, and Equipment Agreement, Contract Number 2019BUS228, between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**State of Iowa**” or “**State**”), and CSDC Inc., a corporation organized under the laws 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 the individual, relevant purchase(s) under the Agreement. Capitalized terms not defined in this herein are as defined in the Agreement.

1. Insurance Requirements. Vendor shall, at its sole expense, maintain in full force and effect, with insurance companies authorized to do business in the United States, insurance covering its work of the type and in amounts required by this Attachment. Vendor’s insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor’s performance of the Agreement as provided in the policies below. All insurance policies required by this Attachment shall: (a) remain in full force and effect for the entire Term of the Agreement; and (b) not be reduced, changed (to the detriment of the State of Iowa or any Governmental Entities), or canceled (without being simultaneously replaced by another policy meeting the requirements of this Attachment). The State of Iowa shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: “It is hereby agreed and understood that the State of Iowa is named as additional insured, and that the coverage afforded to the State of Iowa under this policy shall be primary insurance. If the State of Iowa has other insurance that is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer’s liability under this policy shall not be reduced by the existence of such other insurance.” Notwithstanding the foregoing, the requirement that the State of Iowa be named as additional insureds on all policies of insurance shall not apply to Vendor’s Workers Compensation Insurance. The State of Iowa will accept a combined Technology Errors and Omissions and Cyber Liability policy or a separate Technology errors and Omissions and separate Cyber Liability policy. Such insurance shall cover the liability of Vendor under this Agreement as set forth in the policy summaries provided to OCIO. Such insurance will provide for an occurrence or per claim limit and annual aggregate limit of not less than the amounts set forth in Section 2 of this Attachment; and (c) if underwritten on a claims made insuring agreement, be maintained for a period of not less than two (2) years after the expiration of the Agreement. In the event Vendor fails to secure and continuously maintain the insurance coverage required under this Attachment, the State of Iowa may charge Vendor, and Vendor shall pay the State of Iowa, (a) the State of Iowa’s actual expenses incurred in purchasing similar protection and (b) the value or amount of any claims, actions, damages, liabilities, costs, and expenses paid by the State of Iowa which would not have been paid by the State of Iowa if Vendor had complied with the requirements of this Attachment.
2. Insurance Policies. Unless otherwise requested by the State of Iowa, Vendor shall cause to be issued insurance policies with the coverages set forth below:

<u>Type of Insurance</u>	<u>Limit</u>	<u>Amount</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 million
	Products –	
	Comp/Op Aggregate	\$1 million
	Personal injury	\$1 million
Excess Liability, umbrella form	Each Occurrence	\$1 million
	Aggregate	\$2 million
Technology Errors and Omissions Insurance and Cyber Liability / Network Security	Each Claim	\$2 million
	Aggregate	\$2 million
Workers Compensation and Employer Liability	As Required by Iowa law	\$0.5 million

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

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

**Attachment D #001**  
**Special Terms and Conditions--Ancillary Agreements**

The following Special Terms and Conditions/Ancillary Agreement are part of and incorporated into the State of Iowa and CSDC Master Software, Services, and Equipment Agreement, Contract Number 2019BUS228, (“**Contract**” or “**Agreement**”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**State of Iowa**” or “**State**”), and CSDC Inc., a corporation organized under the laws of Delaware (“**Vendor**” or “**Contractor**”); 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 the individual, relevant purchase(s) under the Agreement. Capitalized terms not defined in this herein are as defined in the Agreement. These Special Terms and Conditions/Ancillary Agreement apply to any Deliverables provided to the Iowa Department of Revenue under the Agreement:

**Iowa Department of Revenue**  
**Confidential Information Requirements for Information Technology Contractors**

I. Access to Confidential Data

The contractor’s employees, agents, and subcontractors may have access to confidential data maintained by the Iowa Department of Revenue (hereafter referred to as ‘IDR’ or ‘the Department’) to the extent necessary to carry out its responsibilities under the Contract. The contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the Department.

II. Performance

In performance of the Contract, the contractor agrees to comply with and assume responsibility for compliance by its employees, agents, or subcontractors with the following requirements:

- 1) All work will be done under the supervision of the contractor or the contractor’s employees.
  - i) The contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the contractor in connection with the performance of its duties under the Contract.
  - ii) The contractor shall provide adequate supervision and training to its employees, agents, or subcontractors to ensure compliance with the terms of the Contract. Annual training shall include, but is not limited to, the IRS video “Protecting Tax Information”.
  - iii) The contractor shall provide acceptance by its employees, agents, or subcontractors, by signature, of the terms of federal and state confidentiality disclosure (see Exhibit 1 Acknowledgment of Statements of Confidentiality).
  - iv) The contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats.
  - v) The contractor will maintain a list of employees, agents, or subcontractors with authorized access to the Department’s data. Such list will be provided to IDR and, when federal tax information (FTI) is involved, to the Internal Revenue Service (IRS) reviewing office upon request.
  - vi) The contractor and the contractor’s employees, agents, and subcontractors with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
  - vii) No work furnished under this Contract will be subcontracted without prior written approval from the Department. If written approval is received, all subcontractors and subcontractor’s employees

shall be held to the same standards as the contractor and the contractor's employees, including, but not limited to, annual training and acceptance of confidentiality disclosure.

- viii) No data can be accessed by contractor, or contractor's employees, agents, and subcontractors located offshore or via any information systems located off-shore.
  - ix) The contractor will complete a security risk assessment questionnaire annually, as part of a certification process with the Department.
- 2) Any tax information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of its duties under this Contract. Inspection by or disclosure to anyone other than an authorized officer, employee, agent or subcontractor of the contractor is prohibited.
  - 3) All tax information will be accounted for upon receipt and properly safeguarded in accordance with security requirements set forth in this Contract before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
  - 4) Upon completion of duties under this Contract or the specific direction of IDR, the contractor will certify that the data processed and any output generated during the performance of duties under this Contract will be completely purged from all data storage components, including, but not limited to data center facility, laptops, computers and other storage devices. If immediate purging of all data storage components is not possible, the contractor will certify that any tax information remaining in any storage component will be safeguarded to prevent unauthorized disclosures until it has been purged. Once all data processed and output generated has been completely purged, the contractor shall submit a signed certification to the Department to that effect.
  - 5) Any spoilage or intermediate hardcopy output that may result during the processing of tax information will be given to the Department. When this is not possible, the contractor will be responsible for the destruction of the spoilage or intermediate hard copy printouts, and will provide the Department with a statement containing the date of destruction, description of material destroyed, and the method used. Destruction method must meet specifications as defined in IRS Publication 1075 Section 8.3.
  - 6) The contractor will ensure that all computer systems processing, storing, or transmitting tax information meets the computer system security requirements defined in IRS Publication 1075 Section 9.1. The security features of the computer systems must meet all functional and assurance requirements for the managerial, operational, and technical security controls. All security features must be available and activated to protect against unauthorized use of and access to tax information.
  - 7) The use of personally owned computers for accessing IDR information is strictly prohibited.
  - 8) Any data supplied by IDR to the contractor or contractor's employees, agents, or subcontractors or created by the contractor or contractor's employees, agents, or subcontractors in the course of the performance of its duties under this Contract shall be considered the property of IDR. No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by the contractor or contractor's employees, agents, or subcontractors except as authorized by law and only with the prior written consent of the Department, either during the period of the Contract or thereafter. The contractor may be liable for an unauthorized disclosure if it fails to comply with federal and state confidential safeguard requirements.

- 9) In the event that a subpoena or other legal process is served upon the contractor for records containing confidential information, the contractor shall promptly notify IDR and cooperate with the Department in any lawful effort to protect the confidential information.
- 10) The contractor shall immediately report to IDR any unauthorized disclosure or security breach of confidential information. These include, but are not limited to: (i) Unauthorized access or disclosure of confidential information; (ii) Illegal technology transfer; (iii) Sabotage, destruction, theft, or loss of confidential information or the information systems, and (iv) Compromise or denial of confidential information or information systems.
- 11) IDR and the IRS, with 24 hour notice, shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. An inspection questionnaire may be used in lieu of an on-site visit at the discretion of the IRS. On the basis of such inspection, specific actions may be required of the contractor in cases where the contractor is found to be noncompliant with Contract safeguards.
- 12) If the Department is required to notify taxpayers of a security or confidentiality breach caused by the contractor, the Department is entitled to reimbursement of such costs related to this notification from the contractor (see Iowa Code § 715C.2).
- 13) If the contractor fails to provide the safeguards described above, IDR will have the right to void the Contract immediately.
- 14) The contractor's confidentiality obligations under this section shall survive the termination of this Contract.
- 15) Any disclosure of federal tax information shall be subject to penalties prescribed by IRC §§ 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1. Any disclosure of state tax information as governed by the Iowa Code Ann., §§ 422.20, 422.72, and 452A.63, shall be subject to penalties prescribed therein.

### III. Criminal/Civil Sanctions

- 1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Each officer and employee shall be further notified that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC §§7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing that any return or return information made available in any format shall be



used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by any unauthorized person constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Each such officer and employee shall be notified that any such unauthorized inspection of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection plus in the case of a willful inspection which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC §§ 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- 3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 4) Granting a contractor access to FTI must be preceded by certifying that each individual understands IDR's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in IDR's files for review. As part of the certification and at least annually afterwards, the contractor shall be advised of the provisions of IRC §§7213, 7213A, and 7431. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See Publication 1075 Section 10). For both the initial certification and the annual certification, the contractor's employees, agents, and subcontractors shall sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

**Exhibit 1**  
**to**  
**Iowa Department of Revenue**  
**Confidential Information Requirements for Information Technology Contractors**

(See attached)

**Attachment D #002**  
Special Terms and Conditions--Ancillary Agreements

The following Special Terms and Conditions/Ancillary Agreement are part of and incorporated into the State of Iowa and CSDC Master Software, Services, and Equipment Agreement, Contract Number 2019BUS228, between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**State of Iowa**” or “**State**”), and CSDC Inc., a corporation organized under the laws 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 the individual, relevant purchase(s) under the Agreement. Capitalized terms not defined in this herein are as defined in the Agreement.

**State of Iowa**  
**Business Associate Agreement**

THIS Business Associate Agreement (“**BAA**”) supplements and is made a part of the Agreement (hereinafter, the “**Underlying Agreement**”) between the Governmental Entities identified in attachment A (the “**Agency**”) and the Contractor (the “**Business Associate**”).

1. **Purpose.** The Business Associate performs certain services on behalf of or for the Agency pursuant to the Underlying Agreement that may include the exchange of information that is protected by the Health Insurance Portability and Accountability Act of 1996, as amended, and the HIPAA Rules (collectively “**HIPAA**”). The parties to the Underlying Agreement are entering into this BAA to establish the responsibilities of both parties regarding Protected Health Information and to bring the Underlying Agreement into compliance with HIPAA.
2. **Definitions.** The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, Designated Record Set, Disclose, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. Business Associate. “**Business Associate**” shall generally have the same meaning as the term “**Business Associate**” at 45 C.F.R. § 160.103, and in reference to the party to this BAA, shall mean the Contractor.
  - b. Covered Entity. “**Covered Entity**” shall generally have the same meaning as the term “**Covered Entity**” at 45 C.F.R. § 160.103, and in reference to the party to this BAA shall mean the portions of the Agency, which is a “**hybrid**” entity under HIPAA, that fall under the purview of HIPAA.
  - c. HIPAA Rules. “**HIPAA Rules**” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
3. **Obligations and Activities of Business Associate.** The Business Associate agrees to:
    - a. Not Use or Disclose Protected Health Information other than as permitted or required by this BAA or as Required By Law;

- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this BAA;
- c. Report to the Covered Entity any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware in accordance with subsection 7, below;
- d. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- e. Make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 C.F.R. §164.524;
- f. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. §164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 C.F.R. § 164.526;
- g. Maintain and promptly make available, as directed by the Covered Entity, the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy the Cover Entity's obligations under 45 C.F.R. § 164.528;
- h. Immediately (*i.e.*, within 72 hours) forward any request that the Business Associate receives directly from an Individual who (1) seeks access to Protected Health Information held by the Business Associate pursuant to this BAA, (2) requests amendment of Protected Health Information held by the Business Associate pursuant to this BAA, or (3) requests an accounting of Disclosures, so that the Covered Entity can coordinate the response;
- i. To the extent the Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- j. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

#### **4. Permitted Uses and Disclosures by the Business Associate.**

- a. The Business Associate may Use or Disclose Protected Health Information received in relation to the Underlying Agreement as necessary to perform the services set forth in the Underlying Agreement.
- b. The Business Associate is not authorized to de-identify Protected Health Information in accordance with 45 C.F.R. § 164.514(a)-(c) unless expressly authorized to do so in writing by the Covered Entity's Security and Privacy Officer.
- c. The Business Associate agrees to make Uses and Disclosures and Requests for Protected Health Information consistent with the Covered Entity's Minimum Necessary policies and procedures.

- d. The Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity.
- e. The Business Associate may Use or Disclose the Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to who the information is Disclosed that the information will remain confidential and used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been Breached.

**5. Obligations of the Covered Entity.**

- a. The Covered Entity will notify the Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect the Business Associate's Use or Disclosure of Protected Health Information
- b. The Covered Entity will notify the Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect the Business Associate's Use or Disclosure of Protected Health Information.
- c. The Covered Entity shall notify the Business Associate of any restriction on the Use or Disclosure of Protected Health Information that the Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect the Business Associate's Use or Disclosure of Protected Health Information.

**6. Permissible Requests by the Covered Entity.** The Covered Entity shall not request the Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by the Covered Entity.

**7. Breach Notification Obligations of the Business Associate.** In the event that the Business Associate discovers a Breach of Unsecured Protected Health Information, the Business Associate agrees to take the following measures immediately (*i.e.*, within 72 hours) after the Business Associate first discovers the incident:

- a. To notify the Covered Entity of any Breach. Such notice by the Business Associate shall be provided without unreasonable delay, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of this BAA, the Business Associate is deemed to have discovered the Breach as of the first day on which such Breach is known to the Business Associate or by exercising reasonable diligence, would have been known to the Business Associate, including any person, other than the Individual committing the Breach, that is a workforce member or agent of the Business Associate;
- b. To include to the extent possible the identification of the Individuals whose Unsecured Protected Health Information has been, or is reasonably believed to have been, the subject of a Breach;
- c. To complete and submit the appropriate Information Security Data Breach Incident Report form identified in attachment A; and

- d. To draft a letter for the Covered Entity to utilize to notify the Individuals that their Unsecured Protected Health Information has been, or is reasonably believed to have been, the subject of a Breach. The draft letter must include, to the extent possible:
  - i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - ii. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as full name, Social Security Number, date of birth, home address, account number, disability code, or other types of information that were involved);
  - iii. Any steps the Individuals should take to protect themselves from potential harm resulting from the Breach;
  - iv. A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate harm, and to protect against any further Breaches; and
  - v. Contact procedures for Individuals to ask questions or learn additional information, which shall include Covered Entity contact information, including a toll-free telephone number, an e-mail address, web site, or postal address.

## **8. BAA Administration.**

- a. *Term and Termination.* This BAA is effective on the date of its incorporation into the Underlying Agreement. The Covered Entity may terminate this BAA for cause if the Covered Entity determines that the Business Associate or any of its Subcontractors or agents has breached a material term of this BAA. The Covered Entity will provide written notice to the Business Associate requesting that the Business Associate remedy the breach within the time frame provided in the notice. The remedy time frame provided the Business Associate will be consistent with the severity of the breach. The Covered Entity reserves the right to terminate the BAA without notice in the event that the Covered Entity determines, in its sole discretion, that notice is either infeasible or inappropriate under the circumstances. Expiration or termination of either the Underlying Agreement or this BAA shall constitute expiration or termination of the corresponding agreement.
- b. *Obligation to Return PHI, Destroy PHI, or Extend Protections to Retained PHI.* Upon expiration or termination of this BAA for any reason, the Business Associate shall return to the Covered Entity or destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by the Business Associate on behalf of the Covered Entity, that the Business Associate still maintains in any form. Return or destruction of Protected Health Information shall take place in accordance with the requirements for such return or destruction as set forth in the Underlying Agreement or as otherwise directed by the Covered Entity. The Business Associate shall retain no copies of the Protected Health Information unless such return or destruction is not feasible. If return or destruction of the Protected Health Information is not feasible, upon expiration or termination of this BAA, the Business Associate shall:
  - i. Retain only that Protected Health Information that is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities to the extent Required By Law;

- ii. Return to the Covered Entity or destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
  - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as the Business Associate retains the Protected Health Information;
  - iv. Not Use or Disclose the Protected Health Information retained by the Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out in subsection 4(e) above under “Permitted Uses and Disclosures by the Business Associate” which applied prior to termination; and
  - v. Return to the Covered Entity or destroy the Protected Health Information retained by the Business Associate when it is no longer needed by the Business Associate for its proper management and administration or to carry out its legal responsibilities.
- c. *Compliance with Confidentiality Laws.* The Business Associate acknowledges that it must comply with all applicable laws that may protect the Protected Health Information or other patient information received and will comply with all such laws, which include but are not limited to the following:
- i. Mental health treatment: Iowa Code chapters 228, 229;
  - ii. HIV/AIDS diagnosis and treatment: Iowa Code § 141A.9;
  - iii. Substance abuse treatment: 42 U.S.C. § 290dd-2; 42 C.F.R. part 2; Iowa Code §§ 125.37, 125.93; and
  - iv. Consumer personal information: Iowa Code ch. 715C.
- d. *Financial Obligations for Breach Notification.*
- i. To the extent that the Business Associate is a governmental agency subject to the provisions of Iowa Code § 679A.19, any dispute between the Contractor and the Agency, including but not limited to the incursion of any costs, liabilities, damages, or penalties related to the Business Associate’s breach of this BAA, shall be submitted to a board of arbitration in accordance with Iowa Code § 679A.19.
  - ii. To the extent that the Business Associate is not subject to the provisions of Iowa Code § 679A.19, the Business Associate shall indemnify and hold harmless the Covered Entity from costs, liabilities, damages, or penalties incurred as a result the Business Associate or any Subcontractor’s breach of this BAA, the Underlying Agreement, or conduct of the Business Associate or the Business Associate’s Subcontractor that is not in compliance with 45 C.F.R. Part 164, subpart E. Such liability shall not attach to disclosures made at the express written direction of the Covered Entity.
  - iii. The Business Associate’s obligations under this subsection 8(d) are not limited to third-party claims but shall also apply to claims by the Covered Entity against the Business Associate.
- e. *Amendment.* The Covered Entity may amend the BAA from time to time by posting an updated version of the BAA on the Agency’s website at: <http://www.dhs.state.ia.us/Consumers/Health/HIPAA/Home.html>, 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 Covered Entity of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days of the Covered Entity's notice referenced herein. Any agreed alteration of the then current Covered Entity BAA shall have no force or effect until the agreed alteration is reduced to a Contract amendment and signed by the Contractor, Agency Director, and the Agency Security and Privacy Officer.
- f. *Survival.* All obligations of the Agency and the Business Associate incurred or existing under this BAA as of the date of expiration or termination will survive the expiration or termination of this BAA.
  - g. *No Third Party Beneficiaries.* There are no third party beneficiaries to this BAA between the parties. The Underlying Agreement and this BAA are intended to only benefit the parties to the BAA.
  - h. *Miscellaneous.*
    - i. *Regulatory References.* A reference in this BAA to a section in the HIPAA Rules means the section as it may be amended from time to time.
    - ii. *Interpretation.* Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.
    - iii. *Applicable Law.* Except to the extent preempted by federal law, this BAA shall be governed by and construed in accordance with the same internal laws as that of the Underlying Agreement.



**Attachment A**

**COVERED ENTITIES AND CORRESPONDING INFORMATION**

<b>Name of Covered Entity</b>	<b>Information Security Data Breach Incident Report form URL</b>	<b>Address</b>	<b>Contact Information</b>