

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

<p>Title of Contract: State of Iowa Technology Products, Services, and Solutions Agreement (“Master Agreement” or “Agreement”) leveraging US Communities Contract No. 4400006644 for Technology Products, Services, and Solutions and any and all corresponding solicitation/response documents, including the Acceptance Agreement and Memorandum of Negotiations, <i>available at</i> http://www.uscommunities.org/fileadmin/hb/usc/Suppliers/Insight_Public_Sector/Insight_Acceptance_Agreement_05.01.16.pdf or any successor webpage thereto (Vendor anticipates a subsequent domain change to: https://omniaconnect.omniapartners.com/), and all amendments thereto and all related contract/solicitation/response documents referenced therein, including the Request for Proposal and all corresponding Addenda (“RFP”), <i>available at</i>: https://www.uscommunities.org/suppliers/insight-public-sector/insight-contract/ or any successor webpage thereto (Vendor anticipates a subsequent domain change to: https://omniaconnect.omniapartners.com/), and Vendor’s responsive technical and cost proposals thereto dated September 21, 2015 (“Proposal”), all of which are incorporated by reference herein as Special Terms and Conditions (all of the foregoing shall be collectively referred to herein as the “US Communities Contract”).</p>	<p>Contract Number: 2018 BUS 0105</p>	
<p>State Agency’s Name: Iowa Office of Chief Information Officer (“OCIO”)</p>		
<p>Vendor’s Name: Insight Public Sector, Inc. (“Vendor”).</p>		
<p>Contract to Begin/Effective As of the Date of Last Signature, below.</p>	<p>Date of Expiration: April 30, 2021</p>	<p>Annual Extensions: Optional one year extensions/renewals; provided that such extensions/renewals shall not extend beyond the total term of the US Communities Contract, including any and all extensions/renewals thereto.</p>

Documents Incorporated/Order of Precedence. This Master Agreement, any and all attachments to this Master Agreement which are incorporated by reference as if fully set forth herein, and the RFP and Proposal which are incorporated by reference as if fully set forth herein, together comprise the terms and conditions governing the relationship between the Parties. In the case of any conflict or inconsistency between the specific provisions of this Master Agreement, any and all attachments to this Master Agreement, or the RFP and the Proposal, such conflict or inconsistency shall be resolved in the following order:

1. First by giving preference to any Special Terms and Conditions addressing compliance concerns of individual Governmental Entities making purchases hereunder;
2. Second by giving preference to the specific provisions of this Master Agreement;
3. Third by giving preference to specific provisions of the RFP;
4. Fourth by giving preference to the Proposal;
5. Fifth by giving preference to the specific provisions of any Purchasing Instruments (Purchase Order(s)/Statement(s) of Work/Requisitions) executed hereunder;
6. Sixth by giving preference to any other Special Terms and Conditions attached hereto.
7. Seventh by giving preference to the specific provisions of the US Communities Contract No. 4400006644 (“**US Communities Contract**”) with Insight Public Sector for Technology Products, Services, Solutions & Related Products and Services.

Notes:

- This Agreement does not guarantee any minimum level of purchases, usage, or compensation;
- This Agreement is available to any Governmental Entity, including State Agencies and political subdivisions, in the State of Iowa;
- Pursuant to Section 12.1, Governmental Entities making purchases hereunder may require Vendor, Vendor Contractors, or Vendor Personnel to execute ancillary agreements to address compliance, legal, confidentiality, and privacy concerns that may be unique to an applicable Governmental Entity, such as a Business Associate Agreement (“**BAA**”) or Criminal Justice Information System (“**CJIS**”) Security Addendum, or other non-disclosure or confidentiality agreement(s) deemed necessary by the applicable Governmental Entity.
- Governmental Entities, including State Agencies and political subdivisions of the State of Iowa may purchase goods available on the Insight Public Sector US Communities Contract No. 4400006644 via this Agreement. Pricing identified in the US Communities Contract No. 4400006644 is ceiling pricing only, and nothing in this Agreement shall be construed to prohibit or otherwise limit the State or any other Governmental Entities from negotiating lower prices for Deliverables and Goods or Products provided hereunder.
- Governmental Entities making purchases hereunder should understand that certain Services, Software, or Goods or Products Vendor supplies hereunder, directly or indirectly, may require the Governmental Entity to execute or otherwise agree to a Software Publisher’s, Cloud Service Provider’s, or Original Equipment Manufacturer’s (“**OEMs**”) standard contract documents or terms and conditions governing a Governmental Entity’s access to, use of, or deployment of such Services, Software, or Goods or Products. Please be sure to carefully review such contract

documents or terms and conditions to ensure your organization is comfortable with the terms and conditions of or related to such access, use, or deployment.

- o In the context of End User License Agreements (“EULAs”) (applicable to traditional Software) or Terms of Service (“TOS”) (applicable to Information Technology delivered as a Service (“Cloud Services”)), please see Special Terms and Conditions #004 (License Agreement Addendum). In this context, OCIO has identified key terms and conditions Governmental Entities should likely seek to amend or otherwise obtain from Publishers/Cloud Services Providers with respect to such Software and Services, and has worked out a process with the Vendor to facilitate that process. Notwithstanding, it is ultimately the individual Governmental Entity’s responsibility to review and understand any contract documents or terms and conditions ultimately agreed to with any applicable Publishes/Cloud Services Provider.
- o With respect to other Goods or Products, extended warranty and product support services may also be accompanied by standard contract documents or other terms and conditions imposed by the OEM. Here too, it is ultimately the individual Governmental Entity’s responsibility to review and understand any contract documents or terms and conditions ultimately agreed to with any applicable OEM.
- o In limited circumstances, OCIO may have negotiated enterprise level agreements that globally address Publisher/Cloud Service Provider/OEM terms on behalf of the Executive Branch. Please check with your assigned Technology Account Manager if you have questions regarding enterprise agreements.

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

Vendor:

Insight Public Sector, Inc.

By (Authorized Signature)



Date Signed

3/26/2019

Printed Name and Title of Person Signing

David Cristal, Vice President and General Manager

Address

6820 S. Harl Avenue Tempe, AZ 85283

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

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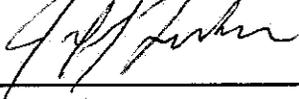
David Cristal, Vice President and General Manager

Address

6820 S. Harl Avenue Tempe, AZ 85283

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

By (Authorized Signature)



Date Signed

3-12-19

Printed Name and Title of Person Signing
Jeff Franklin, Chief Information Officer

Address

Iowa Office of the Chief Information Officer
Hoover Bldg. – Level B
1305 E Walnut St.
Des Moines, IA 50319

State of Iowa Technology Products, Services, and Solutions Master Agreement

This Agreement for Technology Products, Services, and Solutions 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 Office of the Chief Information Officer (“**OCIO**”), and Insight Public Sector, Inc., a corporation organized under the laws of Illinois (“**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 purchase(s) hereunder. The Parties agree to the following:

1. Overview.

- 1.1. Purpose. This Agreement establishes the terms and conditions pursuant to which Governmental Entities in the State of Iowa may procure Technology Products, Services, and Solutions available pursuant to the US Communities Contract. This Agreement does not guarantee any minimum level of purchases, usage, or compensation.
- 1.2. Authorities. OCIO enters into this Agreement, as it relates to Technology Products, Services, and Solutions, available pursuant to the US Communities Contract pursuant to Iowa Code section 8B.24(5)(c). This Section authorizes the Office “on its own behalf or on the behalf of another participating agency or governmental entity, [to] procure information technology by leveraging an existing competitively procured contract . . .” or “[to] procure information technology under a contract let by another agency or other governmental entity, or approve such procurement in the same manner by a participating agency or governmental entity.” In the alternative, Iowa Code section 8B.24(5)(a) authorizes “the office [to] enter into a cooperative procurement agreement with another governmental entity relating to the procurement of information technology, whether such information technology is for the use of the office or other governmental entities.” OCIO has concluded this is in the best interests of the State of Iowa because Vendor is a known provider that has historically provided quality Deliverables and Goods or Products to the State, the US Communities Contract was the product of a competitive process conducted at the national level and thereby resulted in leveraged volume purchasing discounts in excess of those which the State would likely obtain if it conducted a separate competitive process, and utilizing the US Communities Contract saves the State time and money associated with conducting a separate, duplicative competitive process.
- 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 additional one-year renewal terms; provided that any such extensions/renewals shall not extend beyond the total term of the US Communities Contract, including any and all extensions/renewals thereto. The decision to extend this Agreement shall be at the sole option of OCIO and may be exercised by OCIO by providing written notice to Vendor.
- 1.4. Relationship between this Agreement and Individual Purchasing Instruments. Each Purchasing Instrument executed hereunder shall be deemed, upon its execution, to incorporate the terms and conditions of this Agreement and shall constitute a separate, distinct, and independent Agreement between Vendor and the applicable Governmental Entity. To the extent a Governmental Entity other than OCIO makes a purchase hereunder pursuant to a Purchasing Instrument executed by it, such Governmental Entity shall be solely responsible for any payments due and duties and obligations otherwise owed Vendor under this Agreement. In addition, notwithstanding any other provision of this Agreement

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

- 1.5. Incorporation of US Communities Contract. The US Communities Contract identified on the CD&E is incorporated by reference as if fully set forth herein. Governmental Entities making purchases hereunder shall be afforded all of the rights, privileges, warranties, and indemnifications afforded the Lead Public Agency and/or any Agencies making purchases under the US Communities Contract, and such rights, privileges, warranties, and indemnifications shall accrue and apply with equal effect to Governmental Entities making purchases hereunder. Except as otherwise provided herein, Vendor shall perform all duties, responsibilities and obligations required under the US Communities Contract in the time and manner specified thereunder. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the US Communities Contract, such conflict or inconsistency shall be resolved as stated on the CD&E.
2. **Definitions.** In addition to any other terms that may be defined elsewhere in this Agreement, and those defined in the RFP, which are incorporated by reference as if fully set forth herein, the following terms shall have the following meanings:
 - 2.1. **“Acceptance”** means the applicable Governmental Entity has determined a portion of Deliverables and Goods or Products provided under a Purchasing Instrument satisfy the Governmental Entity's Acceptance Tests. **“Final Acceptance”** means the applicable Governmental Entity has determined all Deliverables and Goods or Products 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 and Goods or Products provided under a Purchasing Instrument have not satisfied the Governmental Entity's Acceptance Tests.
 - 2.2. **“Acceptance Criteria”** means the specifications, goals, performance measures or standards, testing results, requirements, technical standards, representations, and/or other criteria designated by the applicable Governmental Entity and against which Acceptance Tests are conducted, including but not limited any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, to the extent applicable the 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 and Goods or Products meet Acceptance Criteria or otherwise satisfy the applicable Governmental Entity, as determined by the applicable Governmental Entity in its sole discretion.
 - 2.4. **“Agreement,”** unless the context requires otherwise, means the collective documentation memorializing the terms of the agreement identified on the 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 any

Governmental Entity to use, maintain, support, modify, enhance, host, or otherwise assist a Governmental Entity with any Deliverables.

- 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, including its Authorized Contractors, related to this Agreement in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Vendor in connection with any Deliverables and Goods or Products provided hereunder and all originals and copies of any the foregoing.
- 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 otherwise controlled or maintained by a Governmental Entity.
- 2.9. **“Customer-Owned Deliverables”** means any Deliverables discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel at the direction of the applicable Governmental Entity or for a Governmental Entity or for a specific project under this Agreement, including all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto.
- 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 Services, work, work product, items, materials, and property to be created, developed, produced, performed by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with this Agreement, including the E-Commerce Portal, and Documentation.
- 2.12. **“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by Vendor, Vendor Contractors, or Vendor Personnel hereunder or otherwise related to or used in conjunction with any Deliverables, in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.
- 2.13. **“End User License Agreement(s)” or “EULA(s)” or “Terms of Service” or “TOS”** means Vendor Contractor’s standard contract documents or terms or conditions governing a Governmental Entity’s access to, use of, or deployment of certain Software or Services Vendor supplies hereunder, directly or indirectly, and that a Governmental Entity may be required to execute or agree to 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 the License Agreement Addendum as Special Terms and Conditions, 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”** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications or other enhancements made to or with respect to the E-Commerce Portal (including any new releases or versions related thereto) or other Deliverables provided or made available by Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder, and all changes to any Documentation made by Vendor, directly or indirectly, as a result of such Enhancements.

- 2.15. **“Goods or Products”** includes all products, equipment, hardware, or Software, third-party provided services, including but not limited to, extended warranty and product support services by an Original Equipment Manufacturer (**“OEM”**), manufacturer or publisher, sold to Governmental Entities hereunder.
- 2.16. **“Governmental Entity”** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity 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.
- 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. **“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.
- 2.19. **“Proposal”** or **“Vendor’s Proposal”** means Vendor’s Response to the RFP dated September 21, 2015. Vendor has provided the State with a copy of its Proposal, which, to the extent applicable, is incorporated by reference as if fully set forth herein, and maintained in the State’s contract file as it relates to this Agreement.
- 2.20. **“Purchasing Instrument”** means documentation issued by a Governmental Entity to Vendor for the purchase of Deliverables and Goods or Products under this Agreement, including a **“Purchase Order”** or **“Statement of Work”** executed hereunder, regardless of form, and which identifies the Deliverables and Goods or Products to be purchased and any other requirements deemed necessary by the applicable Governmental Entity, such as compensation and delivery dates.
- 2.21. **“Request for Proposal”** or **“RFP”** means the Request for Proposal identified on the CD&E, including any attachments or amendments thereto.
- 2.22. **“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.
- 2.23. **“Services”** may include any and all services included within the scope of the RFP and Proposal and as outlined in the applicable Statement of Work.
- 2.24. **“Software”** means any and all other software, programs, applications, modules and components, in object code form, all related Documentation, Enhancements, and Source Code and all copies of the foregoing. Software includes any of the foregoing that is

incorporated or embedded in any other Deliverables and Goods or Products provided by Vendor, directly or indirectly, hereunder, including related infrastructure and platform services sold or otherwise made available, directly or indirectly, by Vendor.

- 2.25. **“Source Code”** means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.
- 2.26. **“Special Terms and Conditions”** means any attachment hereto entitled, in whole or in part, **“Special Terms and Conditions.”**
- 2.27. **“E-Commerce Portal”** means Vendor’s eCommerce Portal, which is an Internet enabled, web-based application, or any like or successor management Software that serves as a mechanism for acquiring Goods or Products hereunder.
- 2.28. **“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.
- 2.29. **“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 in performing or providing Services under this Agreement.
- 2.30. **“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 Services under this Agreement.
- 2.31. **“Warranty Period”** means the ninety (90) day period commencing the date the applicable Governmental Entity provides Vendor written notice of Final Acceptance for the Services and Deliverables, unless a longer warranty period is specified in a Purchasing Instrument.

3. Deliverables.

3.1. Purchasing Instruments.

3.1.1. *Performance.* Vendor, Vendor Contractors, and Vendor Personnel shall commence, complete, and deliver all work and provide all Deliverables and Goods or Products available under the RFP and Proposal in accordance with the deadlines, timelines, terms, conditions, Acceptance Criteria and other requirements set forth in this Agreement, any Purchasing Instrument(s) executed by a Governmental Entity hereunder, and any Service Level Agreement (which may be set forth in or attached to a Purchasing Instrument and thereby incorporated therein and herein and thereby become contractual obligations of Vendor) or other Special Terms and Conditions or any related attachments or documents attached hereto or associated herewith, including a project plan or other similarly captioned document. Except as otherwise set forth herein or in a Service Level Agreement attached as Special Terms and Conditions herein, performance standards, monitoring, and review provisions applicable to specific projects are as set forth in the applicable Purchasing Instrument.

3.1.2. *Delivery.*

3.1.2.1. Risk of Loss. To the extent any Deliverables and Goods or Products are mailed or shipped, Vendor or Vendor Contractors shall bear:

3.1.2.1.1. Except as otherwise set forth in the applicable Purchasing Instrument, and solely to the extent resulting from a request for non-standard shipping by the applicable Governmental Entity, all freight, shipping, handling, and insurance costs for the delivery; and

3.1.2.1.2. All risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.

3.1.2.2. Source Code and Documentation. To the extent set forth in an applicable Purchasing Instrument, Vendor acknowledges and agrees that it or Vendor Contractors shall deliver and provide to the applicable Governmental Entity all Source Code and Documentation related to any Software or other Deliverables that are created, developed, produced, or performed by or on behalf of, or made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, hereunder.

3.1.2.3. *Goods or Products.* Governmental Entities may procure Resale and Fulfillment Items as further identified hereunder. Vendor represents and warrants the following with respect to all Resale and Fulfillment Items:

3.1.2.4. Equipment or hardware. Any Goods or Products 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, will be free of any rightful claim of any Third Party based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

- 3.1.2.5. Software. Vendor shall ensure that all Software, including Software delivered as a Service, provided hereunder is licensed to the applicable Governmental Entity pursuant to a license agreement, the terms and conditions of which are acceptable to the applicable Governmental Entity. 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 attached hereto as Special Terms and Conditions, 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.
- 3.1.2.6. Third Party. 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 Resale and Fulfillment Items provided by or through a Third Party hereunder. Vendor hereby assigns to the applicable Governmental Entity all of licensor's and manufacturer's warranties, indemnities, or other associated benefits pertaining to such Resale and Fulfillment Items under any related license or other agreement between Vendor and the applicable Third Party.
- 3.1.3. *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.
- 3.1.4. *Change Order Procedure.* A Governmental Entity may at any time request a modification to the scope of a Purchasing Instrument using a change order. The following procedures for a change order shall be followed:
 - 3.1.4.1. 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.
 - 3.1.4.2. 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 five (5) business days of receiving the Governmental Entity's change order request.
 - 3.1.4.3. 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. Upon such execution, a change order shall alter only that portion of a Purchasing Instrument to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement.

3.2. System(s).

- 3.2.1. *Grant of License.* As it relates to the E-Commerce Portal Vendor grants to the State of Iowa, OCIO, Governmental Entities executing Purchasing Instruments hereunder or otherwise utilizing or accessing Deliverables and Goods or Products provided by Vendor hereunder, directly or indirectly, and Authorized Contractors of any of the foregoing for the applicable Governmental Entity's business activities, a non-exclusive license to: (i) access, use and, to the extent necessary, maintain and support, the E-Commerce Portal; and (ii) access, use, reproduce and distribute Documentation.
- 3.2.2. *Integration.* As may be more fully described in a subsequent Purchasing Instrument, Vendor will modify and configure an instance of the E-Commerce Portal (which instance will be combined with the Systems/solution integrated and developed pursuant to Section 3.2.2 (Integration) of the State of Iowa Endpoint Managed Services Master Agreement and Technology Products, Services, and Solutions, Contract No. 2018 BUS 0104, ("**Endpoint Agreement**")) to integrate with the State's current incident and service request systems, financial management systems, project management systems, or any other State systems or platforms, such that select State of Iowa Participating Agencies and other Governmental Entities which have entered into an Enrollment Agreement(s) under the Endpoint Agreement may easily make purchases of Goods or Products and Resale and Fulfillment Items (as defined by the Endpoint Agreement) performed or provided by Vendor, directly or indirectly, through either this Agreement or the Endpoint Agreement, by use of and through familiar State systems. The intent of this integration is to create an electronic point of purchase for these select State of Iowa Participating Agencies and other Governmental Entities for select (as mutually agreed to by the Parties) Goods or Products and Resale and Fulfillment Items performed or provided by Vendor, directly or indirectly, through either this Agreement or the Endpoint Agreement, by use of and through familiar State systems. This initial integration will be at no charge to the State. If, during the term of this Agreement, the State migrates to an incident and service request system that is different from ServiceNow, Vendor will use best efforts to modify and configure this instance of the E-Commerce Portal to integrate with any future incident and service request systems utilized by the State.
- 3.2.3. *Configuration.* As may be more fully described in a subsequent Purchasing Instrument, and on an ongoing basis thereafter, and at no additional charge to the State, Vendor will modify and configure the E-Commerce Portal to satisfy the State's specific needs, including generating custom reports to facilitate OCIO's review and oversight of purchases made and Vendor's, Vendor Contractors, and Vendor Personnel's performance under the Agreement in real time.

- 3.2.4. Backend License. Vendor represents and warrants that the scope of Vendor's license to any backend Software, system, platform, or infrastructure ("**Backend**") is sufficiently broad or otherwise sufficiently worded to permit the State and any State personnel, employees, agents, contractors, or Authorized Contractors, or any State systems, to access, use, connect to, integrate with, or exchange data with, as applicable, to the extent necessary to facilitate and effectuate the above-outlined integrations, *see* Section 3.2.1 (Integration) or 3.2.3 (Configuration).
- 3.2.5. *Applicable Governmental Entity Not Required to Accept or Install Enhancements.* Vendor shall not condition any Governmental Entity's rights or Vendor's obligations under this Agreement, or any other contract related to Deliverables, on a Governmental Entity accepting or installing any Enhancements related to the E-Commerce Portal provided by Vendor, directly or indirectly.

4. Compensation and Additional Rights and Remedies.

4.1. Pricing/Compensation.

- 4.1.1. *Generally.* Except as otherwise provided herein or as set forth in an applicable Purchasing Instrument, the maximum price/fees for Deliverables and Goods and Products shall be in an amount equal to or less than the price/fees established in the US Communities Contract, including the RFP and Proposal, which price/fees are generally listed here: <https://www.ips.insight.com/uscommunities> or any successor webpage thereto (as updated from time to time in accordance with the terms and conditions of the US Communities Contract, including the RFP and Proposal).
- 4.1.2. Staff Augmentation/Contingent Labor. Vendor shall provide Staff Augmentation/Contingent Labor Services to Governmental Entities hereunder at:
- 4.1.2.1. Hourly rates less-than-or-equal-to ("**Hourly Rate(s)**") the all-inclusive, hourly, not-to-exceed rates identified in the "**Time & Material Pricing Structure Table,**" available at https://www.ips.insight.com/content/dam/insight/en_US/ips/pdfs/Insight_US_Communities_Services_Price_List_3-15-16_v3.pdf or any successor webpage thereto (as updated from time to time in accordance with the terms and conditions of the US Communities Contract, including the RFP and Proposal), within the "Tier 1" Column ("**Baseline Rate(s)**"), plus a reasonable uplift in the the Hourly Rate where the Governmental Entity requires Vendor/Vendor Contractors/Vendor Personnel to perform the work offsite and supply their own equipment. An Hourly Rates Purchasing Instrument should be used when the Governmental Entity's requirements are not sufficiently defined as to allow for a fixed price to be developed; or
- 4.1.2.2. Lump-sum, fixed-price rates for predefined projects, which shall not otherwise exceed the total cost the applicable Governmental Entity would incur were it billed at Baseline Rates plus:

- 4.1.2.2.1. The actual cost of any other Deliverables and Goods or Products provided by Vendor hereunder or in connection therewith; or
- 4.1.2.2.2. A reasonable uplift in the the Hourly Rate where the Governmental Entity requires Vendor/Vendor Contractors/Vendor Personnel to perform the work offsite and supply their own equipment.

(“Fixed Price, Not-to-Exceed”). A Fixed Price, Not-to-Exceed Purchasing Instrument should be used when a Governmental Entity’s requirements can be set forth in sufficient detail as to allow for a fixed price to be developed. A Fixed Price, Not-to-Exceed Purchasing Instrument may include a milestone payment schedule associated with the Deliverables and Goods or Products defined therein.

Failure of a Governmental Entity to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of any Services, so long as payment of such undisputed fees is made within applicable cure period. For the avoidance of doubt, in the event of any dispute related to fees, Vendor shall continue to perform and provide Deliverables and Goods or Products until such dispute has been Finally Determined by a court of competent jurisdiction or other agreed-upon governing party. **“Finally Determined”** means when a claim or dispute has been finally determined by a court of competent jurisdiction or other agreed-upon governing party and either (a) no associated appeal has timely been sought if capable of being sought, or (b) appellate rights properly exercised have otherwise been exhausted.

- 4.2. No Additional Fees. Except to the extent permitted by Section 4.1, 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). For the avoidance of doubt, there shall be no reimbursable expenses associated with this Agreement, and Vendor shall be solely responsible for all other costs, charges, and expenses it incurs in connection with this Agreement, including equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other operational and administrative costs and expenses.
- 4.3. Satisfactory Deliverables. Vendor is not entitled to payment for any Deliverable(s) and Goods or Products, in whole or in part, provided under this Agreement or any Purchasing Instrument(s) if the applicable Governmental Entity reasonably determines that such Deliverable(s) and Goods or Products has not been satisfactorily or completely delivered or performed in accordance with the applicable Acceptance Testing outlined in Sections 5.1 (Acceptance Testing) and 5.2 (Goods and Products), below, or that in the case of Deliverable(s), the Deliverables fail to meet or conform to any applicable Acceptance Criteria or that there is a material Deficiency with respect to such Deliverable(s).
- 4.4. Effect of Purchasing Instruments. 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.

- 4.5. Payment does not Imply Acceptance. No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the applicable Governmental Entity shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the applicable Governmental Entity, OCIO, or the State of Iowa.
- 4.6. Invoices.
- 4.6.1. Deliverables. Upon receipt of written notice of Acceptance from the applicable Governmental Entity with respect to one or more Deliverable(s), Vendor shall submit an invoice to the applicable Governmental Entity requesting payment of the fees or other compensation specified in the Purchasing Instrument associated with such Deliverable(s), less any Retained Amount(s) to be withheld in accordance with Section 4.7 (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. The applicable Governmental Entity shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code 8A.514 and corresponding implementing rules, regulations, and policies. The applicable Governmental Entity may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code § 8A.514. Notwithstanding anything herein to the contrary, the applicable Governmental Entity shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the applicable Governmental Entity believes the invoice is inaccurate or incorrect in any way.
- 4.6.2. Goods or Products. 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 Goods or Products upon shipment. 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 Goods or Products outlined in the invoice before making payment. The applicable Governmental Entity shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code 8A.514 and corresponding implementing rules, regulations, and policies. The applicable Governmental Entity may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code § 8A.514. Notwithstanding anything herein to the contrary, the applicable Governmental Entity shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount

if the applicable Governmental Entity believes the invoice is inaccurate or incorrect in any way.

- 4.7. Retention. To secure Vendor's performance under this Agreement, a Governmental Entity may retain 15% of the fees or other compensation associated with each Deliverable provided under a Purchasing Instrument ("**Retained Amounts**") until all Deliverables under such Purchasing Instrument have been supplied/provided and the 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.
- 4.8. Erroneous Payments and Credits. Upon written request from the State, 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. 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.
- 4.9. Set-off Against Sums Owed by Vendor. In the event Vendor owes a Governmental Entity any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the applicable Governmental Entity may set off such sum against any sum invoiced to the Governmental Entity by Vendor in the Governmental Entity's sole discretion. Any amounts due the Governmental Entity as damages may be deducted by the Governmental Entity from any money or sum payable by the Governmental Entity to Vendor pursuant to this Agreement or any other agreement between Vendor and the Governmental Entity.
- 4.10. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, a Governmental Entity may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the Governmental Entity or work stoppage by Vendor, in the event the Governmental Entity determines:
- 4.10.1. Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or
 - 4.10.2. Any Deliverable has failed to meet or conform to any applicable Acceptance Criteria or contains or is experiencing a Deficiency.
- No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Governmental Entity under this Agreement.
- 4.11. Reserved.
- 4.12. Error Correction. With respect to each notice from an applicable Governmental Entity to Vendor during the term of this Agreement that notifies Vendor that any Deliverable(s) provided by Vendor, including those previously accepted by the applicable Governmental Entity, contains or experiences a Deficiency, Vendor shall, at no cost to the Governmental Entity, promptly:
- 4.12.1. Correct the Deficiency and repair the affected Deliverable(s); and

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

Attn: Business Services Division Administrator

Iowa Office of the Chief Information Officer

Hoover State Office Building, Level B

Des Moines, IA 50319

Payment shall be made in accordance with the following schedule:

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

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

5.1. Acceptance Testing.

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

Deliverable(s). In the event the Governmental Entity provides notice of Non-acceptance to Vendor with respect to any Deliverable(s), Vendor shall correct and repair such Deliverable(s) and submit it to the Governmental Entity within ten (10) days of Vendor's receipt of notice of Non-acceptance, or as otherwise specified in a Purchasing Instrument, 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:

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

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

- 5.2. Goods and Products. As it relates to Goods and Products, Acceptance will be upon receipt at destination, subject to inspection to ensure such Goods and Products satisfy any applicable Acceptance Criteria, including as may be further described and set forth in the applicable Purchasing Instrument. All Goods and Products that are not accepted, must be

rejected and returned by the applicable Governmental Entity in accordance with the applicable Vendor Contractor’s return policy or thirty (30) days after the date of invoice, whichever is sooner. The applicable Governmental Entity must report any discrepancy in shipment quantity, or damage within ten (10) days after delivery. No return of Goods or Products will be accepted by Vendor without a Return Material Authorization (“RMA”) and an associated number issued by Vendor. Acceptance of any Goods or Products shall not waive, alter, or otherwise affect any warranties, indemnities, or other benefits associated with Goods or Products assigned by Vendor to the applicable Governmental Entity, to the extent available, as required hereunder.

5.3. Reserved.

5.4. 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 and Goods or Products 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:

5.4.1. *Quarterly Reports.* Vendor shall provide OCIO with quarterly reports summarizing the Deliverables/projects and Goods or Products 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 and Goods or Products, the general status of Deliverables/projects and Goods or Products, the most significant problems encountered with respect to Deliverables/projects and Goods or Products and their disposition, and an estimated date of delivery/completion of Deliverables/projects and Goods or Products. 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.

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

- 5.4.3. *Problem Reporting Omissions.* OCIO's or any 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 OCIO or any other Governmental Entity may have.
- 5.4.4. *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.

6. **Ownership and Intellectual Property.**

- 6.1. Vendor Pre-Existing Intellectual Property. Except as specifically granted in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Vendor shall own all intellectual property rights that were independently and exclusively developed by Vendor prior to the Effective Date of this Agreement, including any modifications or improvements made to Vendor pre-existing intellectual property rights during or as a result of the Services to be performed under this Agreement) ("**Vendor IP**").
- 6.2. License to Vendor IP. Except as otherwise provided in and subject to this Agreement or another agreement between the parties, Vendor, Vendor Contractors, and Vendor Personnel hereby grants to the applicable Governmental Entity, OCIO, the State, and Authorized Contractors of any of the foregoing a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license to use, reproduce, modify, distribute copies of, perform, display, host, and prepare derivative works (solely for the applicable Governmental Entity's business or governmental purposes) Vendor IP. The foregoing grant shall be in addition to (and shall not be construed to limit) any rights, licenses, and privileges as may be granted in any license agreement(s) applicable to Vendor IP. Vendor agrees that neither Vendor nor Vendor Contractors, Vendor Personnel, or any other Third Party shall charge or attempt to charge any Governmental Entity any royalty, license fee, or similar charge for any Vendor IP.
- 6.3. Ownership and Assignment of Customer-Owned Deliverables. Except for Vendor IP, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably assigns, transfers, and conveys to the commissioning Governmental Entity all right, title and interest in and to Customer-Owned Deliverables. Vendor represents and warrants that the applicable Governmental Entity shall acquire good and clear title to all Customer-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Vendor or of any Third Party, including Vendor Contractors and Vendor Personnel. Vendor, Vendor Contractors, and Vendor Personnel shall not retain any property interests or other rights in or to Customer-Owned Deliverables and shall not use any Customer-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Governmental Entity commissioning such Deliverables and the payment of such royalties or other compensation as the Governmental Entity deems appropriate. Immediately upon the request of the Governmental Entity, Vendor will deliver to the Governmental Entity or destroy, or both, at the Governmental Entity's option, all copies of any Customer-Owned Deliverables in the possession of Vendor.
- 6.4. Waiver. To the extent any of Vendor's, Vendor Contractor's, or any Vendor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Vendor,

Vendor Contractors, and Vendor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the applicable Governmental Entity's rights in and to Customer-Owned Deliverables.

- 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 otherwise 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, host, and distribute throughout the world any Customer-Owned Deliverable(s) in any medium, whether now known or later devised, including any digital or optical medium; and
 - 6.5.3. 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, including Vendor Contractors or Vendor Personnel.
- 6.6. Further Assurances. At the applicable Governmental Entity's or State's request, Vendor will (both during and after the termination or expiration of this Agreement) execute and deliver such instruments, provide all facts known to it, and take such other action as may be requested by the Governmental Entity or State to:
- 6.6.1. Establish, perfect, or protect the applicable Governmental Entity's or State's rights in and to Customer-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 6.3 (Ownership and Assignment of Customer-Owned Deliverables), 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, Vendor Contractor's, or any Vendor Personnel's signature on any letters patent, copyright, or other analogous protection relating to the Customer-Owned Deliverables, for any reason whatsoever, Vendor, Vendor Contractors, and Vendor Personnel hereby irrevocably designates and appoints the applicable Governmental Entity and its duly authorized officers, employees, and agents, as their agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Vendor.
- 6.7. Third Party Intellectual Property. Except as otherwise provided herein or otherwise agreed to by the Parties in writing, in the event a Deliverable(s) is intellectual property owned by a Third Party ("**Third Party Intellectual Property**"), Vendor shall secure on behalf of and in the name of the applicable Governmental Entity, an irrevocable, nonexclusive,

perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the Third Party Intellectual Property, and to authorize others to do the same on the applicable Governmental Entity's behalf, including its Authorized Contractors. In the event that a Deliverable(s) created by Vendor under this Agreement is a derivative work based upon Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Vendor shall secure on behalf of and in the name of the applicable Governmental Entity an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host the pre-existing elements of such Third Party Intellectual Property, and to authorize others to do the same on the applicable Governmental Entity's behalf.

- 6.8. Rights of the Federal and State Government. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights, including a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Agreement and the copyright in and to such Deliverables. Similarly, in addition to any rights granted hereunder, Vendor, Vendor Contractors, Vendor Personnel, and the applicable Governmental Entity grants to or shall secure on behalf of OCIO and the State and their Authorized Contractors, to the extent applicable, an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, display, and host Customer-Owned Deliverables and any related Third Party Intellectual Property.
- 6.9. Customer Property. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement and in accordance with the terms and conditions of this Agreement and any Purchasing Instrument executed hereunder. Customer Property shall at all times remain the property of the applicable Governmental Entity.
- 6.10. Additional Rights. Except as otherwise provided herein, with respect to any license granted to a Governmental Entity pursuant to this Agreement, a Purchasing Instrument, or any other related agreement, such license shall be deemed to include the following grant of rights to the applicable Governmental Entities:
- 6.10.1. Use, install, host, access, execute, copy, modify, edit, format, translate, maintain, support, repair, enhance, test, demonstrate, and display the Deliverables, and prepare derivative works based on the Deliverables, 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 (“**Licensee Systems**”).
 - 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 right rights granted to the applicable Governmental Entity to its Authorized Contractors; and
 - 6.10.4. The right to permit access to and use of the Deliverables 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, including Vendor Contractors or Vendor Personnel, 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. For purposes of this Agreement, if a Governmental Entity makes any modifications or Enhancements to the Deliverables, (whether directly or indirectly through an Authorized Contractor), the Governmental Entity shall own such modifications or Enhancements.

7. Representations, Warranties, and Covenants.

- 7.1. Deliverables Free of Deficiencies. Except for Goods or Products, 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 Acceptance Criteria 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 Acceptance Criteria within ten (10) days of receiving notice of such Deficiencies or failures from the applicable Governmental Entity. In the event Vendor is unable to repair, correct, or replace such Deliverable(s) to the applicable Governmental Entity's satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverable(s). The foregoing shall not constitute an exclusive remedy under this Agreement, and the applicable Governmental Entity shall be entitled to pursue any other available contractual, legal, or equitable remedies. Vendor shall be available at all reasonable times to assist the Governmental Entity with questions, problems, and concerns about the Deliverable(s), to inform the Governmental Entity promptly of any known Deficiencies in any Deliverable(s), repair and correct any Deliverable(s) not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable(s) may have been accepted by the Governmental Entity, and provide the applicable Governmental Entity with all necessary materials and any related Services with respect to such repaired or corrected Deliverable(s). Acceptance Testing will not in any way relieve Vendor of its responsibilities to correct any Deficiency during the Warranty Period.
- 7.2. Fitness for Intended Purpose. Vendor represents and warrants that it is fully aware of the applicable Governmental Entity's business requirements and intended purposes and uses for the Deliverables, and the Deliverables shall satisfy such requirements, including all Specifications, in all material respects and are fit for such intended purposes and uses.
- 7.3. Quiet Enjoyment. Vendor represents and warrants that: (i) all Deliverables shall be wholly original with and prepared solely by Vendor; (ii) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide Deliverables to any Governmental Entity hereunder and to assign, grant, and convey the rights, benefits, licenses and other rights assigned, granted, or conveyed any Governmental Entity hereunder without violating any rights of any Third Party; (iii) Vendor has not previously and will not grant any rights in any Deliverables to any Third Party that are inconsistent with the rights granted to any Governmental Entity herein; and (iv) the applicable Governmental Entity shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption or interruption.
- 7.4. Intellectual Property.

- 7.4.1. Except for Goods or Products, Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) any Governmental Entity's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform applicable Governmental Entities and OCIO in writing immediately upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, Vendor shall, at the applicable Governmental Entity's request and at Vendor's sole expense: (i) procure for the applicable Governmental Entity the right or license to continue to use the Deliverable(s) at issue; (ii) replace such Deliverable(s) with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation, or misappropriation; (iii) modify or replace the affected portion of the Deliverable(s) with a functionally equivalent or superior Deliverable(s) free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable(s) at issue and refund to the applicable Governmental Entity all fees, charges and any other amounts paid by the Governmental Entity under this Agreement or any related agreement with respect to such Deliverable(s).
- 7.4.2. In the case of Goods or Products, Vendor agrees to pass through to the applicable Governmental Entity, to the extent available, any and all warranties, indemnities, or other benefits associated with such Goods or Products under any related license or other agreement between Vendor and the applicable Third Party, including but not limited to those pertaining to indemnification for intellectual property infringement. Vendor hereby assigns to the applicable Governmental Entity, to the extent available, all of licensor's and/or manufacturer's warranties, indemnities, or other associated benefits pertaining to such Goods or Products under any related license or other agreement between Vendor and the applicable Third Party.
- 7.5. Workmanlike Manner. Vendor represents, warrants, and covenants that all Services to be performed under this Agreement shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Acceptance Criteria of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as the applicable Governmental Entity notifies Vendor of any Services performed in violation of this standard, Vendor shall re-perform the Services at no cost to the applicable Governmental Entity, such that the Services are rendered in the above-specified manner, or if Vendor is unable to perform the Services as warranted, Vendor shall reimburse the applicable Governmental Entity any fees or compensation paid to Vendor for the unsatisfactory services.

- 7.6. Compliance with Law. Vendor represents, warrants, covenants, and promises that Vendor, Vendor Contractors, and Vendor Personnel have complied with, and shall continue to comply with, and, to the extent applicable, the Deliverables will comply with all applicable federal, state, foreign, and local laws, rules, regulations, codes, standards, ordinances, and orders both generally and in connection with the performance of this Agreement, including the following:
- 7.6.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and 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.
 - 7.6.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
 - 7.6.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
 - 7.6.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
 - 7.6.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.0, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
 - 7.6.6. All applicable I.T. Governance Document(s).
 - 7.6.7. To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, the requirements set forth at: <https://das.iowa.gov/sites/default/files/procurement/pdf/IowaHSEMDAdditionalTermsAndConditions.pdf>.
- Vendor shall take such steps as necessary to ensure Vendor Contractors and Vendor Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Agreement to the contrary, Vendor, Vendor Contractors, and Vendor Personnel's failure to fulfill any requirement set forth in this Section shall be regarded as a material breach of this Agreement and OCIO may cancel, terminate, or suspend, in whole or in part, this Agreement, and any Governmental Entity may cancel, terminate, or suspend, in whole or in part, any Purchasing Instrument. In addition, OCIO may declare Vendor ineligible for future State contracts in accordance with authorized procedures or Vendor may be subject to other sanctions as provided by law or rule.
- 7.7. 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.
- 7.8. 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.

- 7.9. 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.
- 7.10. Preservation of Implied Warranties. All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the Deliverables to be provided, or by provision of samples to the applicable Governmental Entity, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by Vendor.
- 7.11. Cumulative Warranties. Except to the extent otherwise provided herein, Vendor's warranties provided in this Section are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to Governmental Entities.

8. **Indemnification.**

- 8.1. Generally. Vendor and its successors and permitted assigns shall indemnify and hold harmless the applicable Governmental Entity and their employees, officers, board members, agents, representatives, and officials ("**Indemnitees**") from and against any third party claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and any other expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including any claims related to, resulting from, or arising out of:
- 8.1.1. Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor, directly or indirectly, of any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or misleading; or
 - 8.1.2. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, Vendor Contractors, or Vendor Personnel; or
 - 8.1.3. 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, withholdings, or provide any insurance required by federal and state law,

including with respect to Social Security, workers compensation, employee income, the Affordable Care Act, and other taxes, fees, or costs required by Vendor or Vendor Contractors to conduct business in the State; or

- 8.1.5. Any claim involving any personal injury or damage to property, including Customer Property, caused, in whole or in part, by Vendor, Vendor Contractors, or Vendor Personnel related to the work performed or any Deliverables provided under this Agreement, including any Security Breach; or
- 8.1.6. Any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation, or security, including any Security Breach; or
- 8.1.7. Any claim for wages, benefits, compensation, insurance, discrimination, or other similar claims asserted against any Governmental Entity making purchases hereunder by any Vendor Personnel, or any claim, penalties, or fines made, levied, assessed, or imposed by another Governmental Entity or any Vendor Personnel against a Governmental Entity making purchases hereunder in any way related to or involving the misclassification of employees as independent contractors or any allegations or findings of the existence of a joint-employment relationship involving any Vendor Personnel; or

8.1.8.

8.1.8.1. Except for Goods or Products, any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of any Third Party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) (“**Indemnified Items**”) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party (collectively “**Claim(s)**”).

8.1.8.2. In the case of Goods or Products, Vendor agrees to pass through to the applicable Governmental Entity, to the extent available, any and all warranties, indemnities, or other benefits associated with such Goods or Products under any related license or other agreement between Vendor and the applicable Third Party, including but not limited to those pertaining to indemnification for intellectual property infringement. Vendor hereby assigns to the applicable Governmental Entity, to the extent available, all of licensor’s and/or manufacturer’s warranties, indemnities, or other associated benefits pertaining to such Goods or Products under any related license or other agreement between Vendor and the applicable Third Party.

- 8.2. Infringement Claim Additional Remedy. If the Indemnified Items, or any portion of them, become or are likely to become the subject of a Claim as provided in Section 8.1.9, then, in addition to paying any damages and attorney fees as required above, Vendor shall, at its option, either:

- 8.2.1. Immediately replace or modify the Indemnified Items, without loss of material functionality or performance, to make them non-infringing, or

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

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

- 8.3. Vendor's obligations under this Section are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.
- 8.4. Vendor's duties as set forth in this Section shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor's, Vendor Contractor's, or Vendor Personnel's performance of this Agreement regardless of the date any potential claim is made or discovered by a Governmental Entity or any other Indemnitee.

9. **Default and Termination.**

- 9.1. Termination for Cause by OCIO or Governmental Entities. OCIO may terminate this Agreement and the applicable Governmental Entity may terminate a Purchasing Instrument upon written notice of Vendor's breach of any material term, condition or provision of this Agreement or the applicable Purchasing Instrument, if such breach is not cured within the time period specified in OCIO's or the applicable Governmental Entity's notice of breach or any subsequent notice or correspondence delivered by OCIO or the applicable Governmental Entity to Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for any liquidated damages. In addition, OCIO may terminate this Agreement and the applicable Governmental Entity may terminate a Purchasing Instrument effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

- 9.1.1. Vendor, directly or indirectly, furnished any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete;
- 9.1.2. Vendor or Vendor Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 9.1.3. Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;
- 9.1.4. Vendor terminates or suspends its business;
- 9.1.5. Vendor's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;

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

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

- 9.2. Termination for Cause by Vendor. Vendor may only terminate an applicable Purchasing Instrument upon written notice of the breach by the applicable Governmental Entity of any

material term, condition, or provision of this Agreement, if such breach is not cured within sixty (60) days of the applicable Governmental Entity's receipt of Vendor's written notice of breach.

- 9.3. Termination for Convenience. Following thirty (30) days written notice, OCIO may terminate this Agreement in whole or in part and the applicable Governmental Entity may terminate a Purchasing Instrument in whole or in part for convenience without the payment of any penalty or incurring any further obligation or liability to Vendor. Termination for convenience can be for any reason or no reason at all.
- 9.4. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, OCIO shall, upon written notice, have the right to terminate this Agreement and the applicable Governmental Entity shall, upon written notice, have the right to terminate a Purchasing Instrument without penalty or liability and without any advance notice as a result of any of the following:
- 9.4.1. The legislature, governor, or other applicable governing body fail in the sole opinion of OCIO or the applicable Governmental Entity to appropriate funds sufficient to allow OCIO or the applicable Governmental Entity to either meet its obligations under this Agreement or the applicable Purchasing Instrument or to operate as required and to fulfill its obligations under this Agreement or the applicable Purchasing Instrument; or
 - 9.4.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by OCIO or the applicable Governmental Entity to make any payment hereunder are insufficient or unavailable for any other reason as determined by OCIO or the applicable Governmental Entity in its sole discretion; or
 - 9.4.3. If OCIO's or the applicable Governmental Entity's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or
 - 9.4.4. If OCIO's or the applicable Governmental Entity's duties, programs, or responsibilities are modified or materially altered; or
 - 9.4.5. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects OCIO's or the applicable Governmental Entity's ability to fulfill any of its obligations under this Agreement or the applicable Purchasing Instrument.
- 9.5. Limitation of Payment Obligations. In the event of a termination of this Agreement or a Purchasing Instrument for any reason (except for termination by OCIO or a Governmental Entity pursuant to Section 9.1), the applicable Governmental Entity shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the Governmental Entity up to and including the date of termination of this Agreement or the applicable Purchasing Instrument and for which the Governmental Entity is obligated to pay pursuant to this Agreement, or, in the case of Goods or Products, for conforming products ordered and shipped prior to the termination date and for which Acceptance is subsequently provided consistent with Section 5.2 (Goods and Products) and for which the Governmental Entity is otherwise obligated to pay pursuant to this Agreement; provided however, that the applicable Governmental Entity's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof

of Vendor's claim. Notwithstanding the foregoing, this Section in no way limits the rights or remedies available to the applicable Governmental Entity and shall not be construed to require the Governmental Entity to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts otherwise withheld by the Governmental Entity in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, a Governmental Entity shall not be liable, under any circumstances, for any of the following:

- 9.5.1. The payment of unemployment compensation to Vendor Personnel;
 - 9.5.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
 - 9.5.3. Any costs incurred by Vendor in its performance of the Agreement, including startup costs, overhead or other costs associated with the performance of the Agreement;
 - 9.5.4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;
 - 9.5.5. Any taxes Vendor may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes or property taxes.
- 9.6. Vendor's Termination or Expiration Duties. Upon receipt of notice of termination, upon expiration, or upon request of the applicable Governmental Entity, Vendor shall:
- 9.6.1. Except as otherwise required pursuant to Section 9.7, Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as OCIO or the applicable Governmental Entity may require;
 - 9.6.2. Immediately cease using and return to the applicable Governmental Entity any property (including Customer Property) or materials, whether tangible or intangible, provided by a Governmental Entity to Vendor or prepared or developed by Vendor for the Governmental Entity hereunder;
 - 9.6.3. Immediately return to the applicable Governmental Entity any payments made by the Governmental Entity for Deliverables and Goods or Products that were not rendered or provided by Vendor;
 - 9.6.4. Immediately deliver to OCIO and the applicable Governmental Entity any and all Deliverables and Goods or Products, including Customer-Owned Deliverables, Software, and Documentation, for which the applicable Governmental Entity has a property interest and has made payment (in whole or in part) that is in the possession of or under the control of Vendor, Vendor Contractors, or Vendor Personnel in whatever stage of development or form at the time of such termination.
- 9.7. Vendor Cooperation/Transition Services. Vendor agrees that in connection with any termination or expiration of this Agreement or any Purchasing Instrument, Vendor will continue to perform and provide such Deliverables 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 such termination or expiration or upon expiration of the applicable Statement of Work, whichever is shorter. As part of such request, OCIO or the applicable Governmental Entity will inform Vendor of the number of days during which Vendor will perform transition and other related Services under this Section (“**Transition Period**”). During the Transition Period, Vendor will take all actions as may be necessary or requested by OCIO or the applicable Governmental Entity to accomplish a complete and timely transition of the Services 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 Deliverables (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 Deliverables. Vendor agrees that it will perform all transition services in good faith and in a professional and businesslike manner, and shall comply with all reasonable requests of the applicable Governmental Entity or any New Contractor to assist in the effort to accomplish a successful, seamless and unhindered transition and transfer of Vendor’s responsibilities under this Agreement or the applicable Purchasing Instrument. During the Transition Period, and solely to the extent there are legally available funds to do so, the applicable Governmental Entity(ies) agrees to pay Vendor any fees to which Vendor would be entitled under this Agreement for Deliverables performed or provided during such period; provided this Agreement was not terminated pursuant to Section 9.1 and Vendor continues to be in full compliance with all terms and conditions of this Agreement. In the event the Governmental Entity’s request for transition assistance does not require Vendor to continue providing all of the Deliverables under this Agreement or a particular Purchasing Instrument, the Parties shall negotiate in good faith an equitable adjustment in the fees which are otherwise payable to Vendor for such Deliverables.

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

10. **Confidentiality.**

- 10.1. Vendor’s Treatment of Confidential Information.

10.1.1. *Limited Access.* Customer Data shall at all times remain the property of the applicable Governmental Entity, and the applicable Governmental Entity shall retain exclusive rights thereto and ownership thereof. Vendor, Vendor Contractors, and Vendor Personnel may have access to Customer Data solely to the extent necessary to carry out their duties under the Agreement. Vendor, Vendor Contractors, or Vendor Personnel shall presume all Customer Data is considered confidential, hold all Customer Data in the strictest confidence, and use and permit use of Customer Data solely for the purposes of providing Deliverables and Goods or Products under this Agreement, subject to any restrictions set forth herein or in any state and federal laws, rules, regulations, standards, and orders applicable either during the term 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 or disseminate 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 necessary to provide or perform Deliverables and Goods or Products, to fulfill their obligations under this Agreement, or is otherwise approved in writing by the applicable Governmental Entity. Vendor will immediately report the unauthorized disclosure of Customer Data to the Agency.

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

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

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

- 10.1.3.1. As soon as becoming aware of such law, order, or requirement, and no-less-than five (5) business days prior to disclosing Customer Data pursuant thereto, Vendor will notify the applicable Governmental Entity in writing, specifying the nature

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

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

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

10.2. Treatment of Vendor's Confidential Information.

- 10.2.1. *Safeguarding Obligation.* Except as provided or contemplated herein, and subject to applicable state, federal, and/or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), Governmental Entities shall not intentionally disclose Vendor's Confidential Information to a Third Party (excluding other Governmental Entities and Authorized Contractors) without the prior written consent of Vendor.
- 10.2.2. *Destruction or Return of Vendor's Confidential Information.* On termination or expiration of this Agreement or the applicable Purchasing Instrument, the applicable Governmental Entity shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at 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 and Goods or Products).
- 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 reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
- 10.2.3.4. If the applicable Governmental Entity, in the Governmental Entity's sole discretion, determines Vendor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

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

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

- 10.5. Survives Termination. Vendor’s duties as set forth in this Section shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Vendor’s, Vendor Contractor’s, or Vendor Personnel’s performance of this Agreement regardless of the date any potential claim is made or discovered by a Governmental Entity.

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, Vendor Contractors, or Vendor Personnel store, process, transmit, retain, or otherwise maintain 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, theft, or modification of Customer Property. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53 Revision 4 and ISO 27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard their own Confidential Information of like importance. In addition, such security measures, to the extent applicable, shall comply with, and shall enable the applicable Governmental Entity to at all times comply fully with, all applicable federal, state, and local laws, rules, standards, policies, or procedures ordinances, codes, regulations, and orders related to such security measures or other security, privacy, or safeguarding requirements, including applicable I.T. Governance Document(s) or any applicable Governmental Entity’s then-current security policies, standards, or procedures that have been supplied to Vendor or Vendor Contractors by such Governmental Entity.

11.1.2. Terms and conditions of or related to storage, processing, transmission, retention, encryption, or other maintenance, including data location, of Customer Data at rest and all backups shall be as set forth in the applicable Statement of Work.

11.1.3. Vendor may permit Vendor Personnel to access Customer Data remotely only as required to provide technical support.

- 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, processes, transmits, 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. Specific data formats for the import and export of Customer Data may be defined on a Statement-of-Work by Statement-of-

Work basis. 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 seven (7) days, or as otherwise specified in a Statement of Work, 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 within the timeframe(s) specified in the applicable Statement of Work.
- 11.2.3. *Ongoing Security Testing.* Vendor will periodically test its systems for potential areas where security could be breached. 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.
- 11.2.4. *Security Audit by OCIO.* During the term, OCIO or its Authorized Contractor(s) may perform security audits/scans as identified in a Statement-of-Work of Vendor's environment upon reasonable notice and through mutually agreed upon coordination with Vendor's Information Security Team. 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.

11.3. Personnel Safeguards.

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 fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to one (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 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 another 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, including Customer Data, 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.
- 11.4.1. *Reporting.* Vendor or Vendor Contractors will report to the applicable Governmental Entity and OCIO within one (1) business day of Vendor’s or Vendor Contractor’s discovery of any actual or suspected Security Breach, or as otherwise defined and agreed upon in a Statement of Work. 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 and Vendor Contractors agree, at their sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the 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 and Vendor Contractor 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 and Vendor Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. Vendor and Vendor Contractor will deliver to the applicable Governmental Entity and OCIO a root cause assessment and future incident mitigation plan, and deliver a preliminary assessment and plan as soon as practical and regularly maintain and update such assessment and plan throughout the course of any investigation. Vendor agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless the applicable Governmental Entity specifically requests Vendor do so in writing.

11.4.3. *Additional Remedies in the Event of Actual Breach.* Upon the applicable Governmental Entity's determination that a Security Breach involving or relating to Customer Data has occurred, Vendor and Vendor Contractors shall fully cooperate with the applicable Governmental Entity and OCIO in fully rectifying/responding to such Security Breach, including notifying all of the Governmental Entity's affected users. The applicable Governmental Entity shall determine, in its sole discretion, the content and means of delivery of any such notifications. Notwithstanding any provision in this Agreement or any other related agreement to the contrary, Vendor will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (including the reasonable value of time of the Iowa Attorney General's Office or the costs, expenses and attorney fees of other counsel retained by the State or any other Governmental Entity) related to, arising out of, or incurred by or on behalf of any Governmental Entity as a result of, any Security Breach caused directly or indirectly, in whole or in part, by Vendor 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.

11.5. Business Continuity/Disaster Recovery.

11.5.1. *Creation, Maintenance and Testing.* Vendor maintains a formal Enterprise Resiliency program that requires business continuity and disaster recovery plans be in place for critical operations and technology. Vendor and Vendor Contractors shall maintain a Business Continuity and Disaster Recovery Plan (“**Plan**”) for Services where there is a requirement in a Statement of Work that there be such Plan, and implement such Plan in the event of any unplanned interruption of Services. Upon request by the applicable Governmental Entity, Vendor or Vendor Contractors shall provide OCIO, and other Governmental Entities, with a copy of the Plan, revision history, and any reports or summaries relating to past testing of the Plan. To the extent applicable, Vendor and Vendor Contractors 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 and Vendor Contractors 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 any resulting updates to the Plan. As defined or described in the applicable Statement of Work, Vendor and Vendor Contractors shall maintain disaster avoidance procedures designed to safeguard Customer Data and the accessibility and availability of the Services. Additional disaster recovery/business continuity requirements may be set forth in individual Statements of Work.

11.5.2. Activation of Plan. To the extent applicable, Vendor and Vendor Contractors shall, within one (1) business day, notify OCIO and any adversely affected Governmental Entities of any disaster or other event in which the Plan is activated. If Vendor or Vendor Contractors fail 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 adversely affected Governmental Entities may terminate applicable Purchasing Instrument(s) as a non-curable default under Section 9.1. Without limiting Vendor’s obligations under this Agreement, whenever a disaster causes Vendor or Vendor Contractors to allocate limited resources between or among Vendor’s or Vendor Contractor’s customers, Governmental Entities procuring Deliverables hereunder shall receive at least the same treatment as comparable Vendor or Vendor Contractor’s customers with respect to such limited resources. The provisions of Section 12.26 (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. Vendor shall include the terms and conditions in this Section in all of its contracts, subcontracts, or other agreements with Vendor Contractors.

12. **General Provisions.**

- 12.1. Ancillary Agreements and Non-Disclosure Agreements. Vendor or Vendor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to an applicable Governmental Entity making purchases hereunder, such as a Business Associate Agreement (“BAA”) or Criminal Justice Information System (“CJIS”) Security Addendum, or any other non-disclosure or confidentiality agreements in connection with this Agreement or any related agreement deemed necessary by the applicable Governmental Entity (“Ancillary Agreement(s)"). Such Ancillary Agreements shall be attached as Special Terms and Conditions hereto and incorporated by reference as if fully set forth herein.
- 12.2. Immigration Status. Vendor and Vendor Contractors are responsible for ensuring Vendor Personnel possess and maintain valid Visas for any Vendor Personnel for whom a Visa is required. 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, Vendor Contractors, and Vendor Personnel 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, Vendor Contractors, and Vendor Personnel 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 Corporation Service Company, 505 5th Avenue, Suite 729, 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. 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 the applicable 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 and Goods or Products relate. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide OCIO and any Governmental Entities making purchases hereunder with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of OCIO or the applicable Governmental Entity. Vendor further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Vendor under this Agreement.
- 12.9. 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 claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any Vendor Contractor. In addition, the State, OCIO, and any Governmental Entity is not responsible for any failure of any Vendor Contractors to pay any amounts that may be due Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with Deliverables performed or provided under this Agreement, the applicable Governmental Entity may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in such manner shall not relieve Vendor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow Governmental Entities making purchases hereunder to access the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Vendor Contractors. Any action of a Vendor Contractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect. The term "**Vendor**" as used in this Agreement shall, unless the context clearly requires to the contrary, be deemed to include Vendor Contractors and Vendor Personnel.

- 12.10. Integration. This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included in this Agreement. Thus, 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 Special Terms and Conditions, Ancillary Agreements, schedules, exhibits, and other like 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 the 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. Reserved.
- 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 affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the State:

Attn: Business Services Division Administrator

Iowa Office of the Chief Information Officer

Hoover State Office Building, Level B

Des Moines, IA 50319

If to Vendor:

Insight Public Sector, Inc.

Attn: Legal Department - SLED Compliance

6820 S. Harl Avenue

Tempe, AZ 85283

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. Solely to the extent required by a Purchasing Instrument, time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all Vendor Contractors and Vendor Personnel providing Deliverables hereunder are responsive to the applicable Governmental Entity's requirements and requests in all respects.
- 12.17. 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 may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- 12.22. 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. 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; claims or court orders that restrict Vendor’s or Vendor Contractor’s ability to perform or deliver the Deliverables and Goods or Products contemplated by this Agreement; strikes; labor unrest; or supply chain disruptions. If delay results from a Vendor Contractor’s conduct, negligence or failure to perform, Vendor shall not be excused from compliance with the terms and obligations of Vendor unless the Vendor Contractor is prevented from timely performance by a “force majeure” as defined in this Agreement. If a “force majeure” delays or prevents Vendor’s performance, Vendor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Governmental Entity adversely affected. The Party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other Party of the occurrence and reason for the delay. The Parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which Vendor’s performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.
- 12.27. 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. 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 property purchased by Vendor, for which Vendor has been reimbursed or paid by a Governmental Entity under this Agreement, shall pass to and vest in that Governmental Entity, except as otherwise provided in this Agreement.
- 12.31. Exclusivity. This Agreement is not exclusive. During the term of this Agreement, any Governmental Entity making purchases hereunder may obtain similar or identical Deliverables and Goods or Products from other vendors.
- 12.32. Award of Related Agreements. Governmental Entities making purchases herunder may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with Authorized Contractors who may be engaged by a Governmental Entity in connection with this Agreement. Any reference herein to a Governmental Entity's designee or other like reference shall be deemed to include its Authorized Contractors. Vendor will ensure that any Vendor Contractors or Vendor Personnel will abide by this provision.
- 12.33. 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. Attorney's Fees and Expenses. In the event Vendor defaults on any of its obligations under this Agreement, Vendor shall pay to the applicable Governmental Entity all costs

and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the Governmental Entity) incurred by the applicable Governmental Entity in enforcing this Agreement or any of its rights and remedies with respect thereto.

- 12.35. Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property, including Customer Property, furnished by a Governmental Entity for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the applicable Governmental Entity's request, restore damaged property to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the applicable Governmental Entity. In addition, at the applicable Governmental Entity's request, Vendor will reimburse the Governmental Entity for any loss or damage to such property caused by Vendor, Vendor Contractors, or Vendor Personnel. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of any Governmental Entity, including OCIO or the State. Vendor shall obtain the prior advance written approval from the Governmental Entity prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks, or intellectual property rights of any Governmental Entity.
- 12.36. 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 and any Governmental Entities making Purchases hereunder that is or may constitute a conflict of interest or appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement and any Purchasing Instruments executed hereunder, and Vendor, Vendor Contractors, and Vendor Personnel shall not engage in any conduct or permit any Third Party from engaging in any conduct that would violate that chapter.
- 12.37. Use of this Agreement required for Participating Agencies/Compliance with State I.T. Standards, Policies, and Procedures.
- 12.37.1. 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, unless otherwise directed by the OCIO, and excluding Endpoint Managed Services (which are to be purchased through State of Iowa Endpoint Managed Services Master Agreement and Technology Products, Services, and Solutions, 2018 BUS 0104), Participating Agencies are required to use this Agreement for the purchase of the Deliverables and Goods or Products purchased from this Vendor.
- 12.37.2. Failure of a Participating Agency to follow the above requirement 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, or any other applicable I.T. Governance Document(s), 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 through this or any other agreement unless or until Vendor receives authorization from OCIO to do so.

12.37.3. 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 and Goods or Products available or described hereunder or other like or similar Deliverables and Goods or Products:

12.37.3.1. Any Governmental Entity, other than a Participating Agency;

12.37.3.2. The office of the governor or the office of an elective constitutional or statutory officer

12.37.3.3. The general assembly, or any office or unit under its administrative authority;

12.37.3.4. The judicial branch, as provided in Iowa Code section 602.1102;

12.37.3.5. The state board of regents and institutions operated under its authority.

13. **Limitation of Liability.** Except as otherwise set forth herein, and solely to the extent permitted by and not prohibited by applicable laws, rules, regulations, orders, or policies: (a) the maximum liability of any Party under this Agreement shall be one (1) time the Contract Value (“**Contract Value**” is defined as the aggregate total compensation to be paid by the applicable Governmental Entity to Vendor under the applicable Purchasing Instrument executed by the individual Governmental Entity hereunder, including all renewals and extensions or other like continuation, thereof); and (b) no Party shall be liable to the other for consequential, incidental, indirect, special, or punitive damages; provided, however, under no circumstances shall the foregoing limitations apply to any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:

13.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or the gross negligence, or bad faith of Vendor, Vendor Contractors, or any Vendor Personnel;

13.2. Death, bodily injury, Security Breaches, caused in whole or in part, by any act or omission of Vendor, Vendor Contractors, or Vendor Personnel or any unauthorized access affecting Customer Data, or damage to real or personal property;

13.3. Any contractual obligations of Vendor or Vendor Contractors pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws, rules, or regulations, including but not limited to those related to data security and privacy; confidential information; Security Breach caused, in whole or in part, by any act or omission of Vendor, Vendor Contractors, or Vendor Personnel; disaster recovery; or return/migration of data;

- 13.4. Any claims arising under provisions of the Agreement calling for indemnification of any Governmental Entity, including the State of Iowa, or any Indemnitee for third-party claims against any Governmental Entity, including the State of Iowa, for bodily injury to persons or for damage to real or tangible personal property caused by the Vendor's, Vendor Contractor's, or Vendor Personnel's negligence or willful conduct.

The limitation on Vendor's liability specified in this Section 13 (Limitation of Liability) shall not, under any circumstances, apply to any losses, damages, expenses, costs, settlement amounts, judgments, legal fees, actions, claims, or any other liability or other amounts that may be covered (or otherwise eligible to be paid or indemnified) under any insurance policies, bonds or other coverages held or maintained by or on behalf of Vendor. Further, nothing in this Agreement, including Section 13 (Limitation of Liability), shall: (i) be construed as an admission, assumption or representation by any Governmental Entity, including the State of Iowa, that any limitation on Vendor's liability specified in this Section 13 (Limitation of Liability) is enforceable against the applicable Governmental Entity, including the State of Iowa, under applicable law or that any Governmental Entity, including the State of Iowa, has the authority to agree to the limitation on Vendor's liability specified in this Section 13 (Limitation of Liability); (ii) prevent any Governmental Entity, including the State of Iowa, from challenging the enforceability or validity of this Section 13 (Limitation of Liability); or (iii) 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 any Governmental Entity, including the State of Iowa.

Special Terms and Conditions #001

The following Special Terms and Conditions/Ancillary Agreement are part of and incorporated into the State of Iowa Technology Products, Services, and Solutions Master Agreement, Contract No. 2018 BUS 0105, (“**Agreement**”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**OCIO**”), and Insight Public Sector, Inc., a corporation organized under the laws of Illinois (“**Vendor**”). Capitalized terms used but not defined herein are as defined in the Agreement. These Special Terms and Conditions/Ancillary Agreement apply to any Services provided to the Iowa Department of Revenue under the Agreement, or any other engagement where Vendor may be granted access to federal tax information (FTI) as defined below:

Iowa Department of Revenue Confidential Information Requirements for 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.

Special Terms and Conditions #002

The following Special Terms and Conditions/Ancillary Agreement are part of and incorporated into the State of Iowa Technology Products, Services, and Solutions Master Agreement, Contract No. 2018 BUS 0105, (“**Agreement**”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**OCIO**”), and Insight Public Sector, Inc., a corporation organized under the laws of Illinois (“**Vendor**”). Capitalized terms used but not defined herein are as defined in the Agreement. These Special Terms and Conditions/Ancillary Agreement apply to any Services provided to the Governmental Entities identified in attachment A hereto.

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**

Name of Covered Entity	Information Security Data Breach Incident Report form URL	Address	Contact Information
Iowa Department of Human Services	https://dhs.iowa.gov/sites/default/files/DHS_Incident_Rpt_470-5134.docx	DHS Security and Privacy Office Iowa Department of Human Services 1305 E Walnut Street, 1st Floor Des Moines, IA 50319-0114	Phone: 1-800-803-6591 e-mail: hipaa@dhs.state.ia.us
Iowa Veterans Home	https://ivh.iowa.gov/hippa/privacy-forms	Iowa Veterans Home Attn: Privacy Officer 1301 Summit Street Marshalltown, IA 50158	Phone: 641-844-6352 e-mail: privacyofficer@ivh.state.ia.us

Special Terms and Conditions #003
Insurance

The following Special Terms and Conditions are part of and incorporated into the State of Iowa Technology Products, Services, and Solutions Master Agreement, Contract No. 2018 BUS 0105, (“**Agreement**”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**OCIO**”), and Insight Public Sector, Inc., a corporation organized under the laws of Illinois (“**Vendor**”). Capitalized terms used but not defined 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 admitted to do business in the State of Iowa, 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 regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Exhibit shall: (a) remain in full force and effect for the entire Term of the Agreement; and (b) not be reduced, changed (to the detriment of the State of Iowa or any Governmental Entities), or canceled (without being simultaneously replaced by another policy meeting the requirements of this Exhibit). The State of Iowa shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: “It is hereby agreed and understood that the State of Iowa is named as additional insured.” Notwithstanding the foregoing, the requirement that the State of Iowa be named as additional insureds on all policies of insurance shall not apply to Vendor’s Workers Compensation Insurance. The State of Iowa will accept a combined Technology Errors and Omissions and Cyber Liability policy or a separate Technology errors and Omissions and separate Cyber Liability policy. Such insurance shall, (a) cover the liability of Vendor by reason of any actual or alleged error, omission, negligent act or wrongful act of Vendor committed in rendering or failing to render any products or services, and shall specifically include coverage for liabilities caused by a security breach, breach of privacy, or a breach of privacy regulations, including unauthorized disclosure of information, unauthorized access, or failure to protect a network security breach; liabilities resulting from the unauthorized release, transmission or publication of private or technical information in your possession under the scope of the Agreement; (b) including the indemnification of the State of Iowa for any costs and expenses, including the State of Iowa’s notification expenses, incurred by the State of Iowa arising out of a security breach, privacy breach, or breach of privacy regulations; with an occurrence or per claim limit and annual aggregate limit of not less than \$5,000,000 each claim/\$5,000,000 annual aggregate; and (c) if underwritten on a claims made insuring agreement, be maintained for a period of not less than two (2) years after the expiration of the Agreement. In the event Vendor fails to secure and continuously maintain the insurance coverage required under this 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 Exhibit.
2. Insurance Policies. Unless otherwise requested by the State of Iowa, Vendor shall cause to be issued insurance policies with the coverages set forth below:

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

3. Claims Provision. All insurance policies required by this Exhibit, with the exception of the policy for Errors and Omissions Insurance, must provide coverage on an “occurrence basis” for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy. The policy for Errors and Omissions Insurance will provide coverage on a “claims made” basis, provided however, that such policy includes extended reporting period or tail coverage acceptable to the State of Iowa.
4. Certificates of Coverage. At the time of execution of the Agreement, Vendor shall deliver to the State of Iowa certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to the Agreement, certifying that the State of Iowa is named as an additional insured on the policies of insurance by endorsement as required herein, and certifying should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with policy provisions. Vendors’ certificate(s) must also include all Vendor Contractors as additional insureds under its policies, or Vendor must furnish to the State separate certificates for each Vendor Contractor. All coverage for Vendor Contractors are subject to the minimum requirements identified above. All certificates of insurance shall be subject to approval by the State of Iowa. The Vendor shall deliver the certificates to 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 and the Agreement.
6. Waiver of Subrogation Rights. Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State of Iowa. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State of Iowa for all policies.

7. Filing of Claims. In the event the State of Iowa suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Vendor shall, at the State of Iowa's request, immediately file a proper claim under such policy. Vendor will provide the State of Iowa with proof of filing of any such claim and keep the State of Iowa fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the State of Iowa. Vendor shall pay to the State of Iowa any insurance proceeds or payments it receives in connection with any such claim immediately upon Vendor's receipt of such proceeds or payments.
8. Proceeds. In the event the State of Iowa suffers a loss that may be covered under any of the insurance policies required under this attachment or the Agreement, neither 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.

**Special Terms and Conditions #004
License Agreement Addendum**

The following Special Terms and Conditions are part of and incorporated into the State of Iowa Technology Products, Services, and Solutions Agreement, Contract No. 2018 BUS 0105, (“**Agreement**”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**OCIO**”), and Insight Public Sector, Inc., a corporation organized under the laws of Illinois (“**Vendor**”). Capitalized terms not defined herein are as defined in the Agreement.

Subject to their review and approval, Governmental Entities may be required to sign or otherwise agree to Vendor Contractor’s standard contract documents or terms and conditions governing a Governmental Entity’s access to or use of certain Software (which may be or may be incorporated or embedded in Goods or Products) or Cloud Services Vendor supplies hereunder, directly or indirectly (typically referred to as “**End User License Agreements**” or “**EULA(s)**” for traditional Software and “**Terms of Service**” or “**TOS**” for Software, platforms, infrastructure, or other similar Information Technology delivered as a service (“**Cloud Services**”). Governmental Entities intend the following State of Iowa End User License Agreement and State of Iowa Terms of Service, respectively, attached hereto, to be part of and take priority as it relates to conflicting or inconsistent provisions of Vendor Contractor’s standard contract documents or terms and conditions and together govern the use of any and all such Software and Cloud Services.

- 1. EULA Management.** Vendor will perform the following EULA management functions:
 - a. In addition to working with the Software supplier (“**Publisher**”) on pricing and other commercial requirements, Vendor will provide to Publisher the Governmental Entity’s custom (typically the State of Iowa End User License Agreement) EULA terms (“**Customer EULA Terms**”) or the Publisher’s EULA terms, as modified by the Governmental Entity.
 - b. If the Publisher agrees with and countersigns the Customer EULA Terms or the EULA terms as modified by the Governmental Entity, Vendor will notify Governmental Entity to proceed with purchase of Software titles by placing the Purchasing Instrument.
 - c. If the Publisher rejects the Customer EULA Terms or the modified EULA terms, Vendor will notify the Governmental Entity and the Governmental Entity may elect to either continue with the Purchasing Instrument, decline to proceed, or engage in negotiations directly with the Publisher, all as facilitated/coordinated by Vendor.
 - d. If the Governmental Entity accepts the original Publisher EULA terms, the Governmental Entity will notify Vendor in writing and proceed with executing the Purchasing Instrument.
 - e. If the Governmental Entity rejects the original Publisher EULA terms, Vendor will provide a new Publisher and corresponding EULA.
- 2. TOS Management.** Vendor will perform the following TOS management functions:
 - a. In addition to working with the Cloud Services provider (“**CSP**”) on pricing and other commercial requirements, Vendor will provide to the CSP the Governmental Entity’s custom TOS (typically the State of Iowa Terms of Service) terms (“**Customer TOS Terms**”) or the CSP’s TOS terms, as modified by the Governmental Entity.
 - b. If the the CSP agrees with and countersigns the Customer TOS Terms or the TOS terms as modified by the Governmental Entity, Vendor will notify the Governmental Entity to proceed with purchase of the applicable Services by placing the Purchasing Instrument.
 - c. If the CSP rejects the Customer TOS Terms or the modified TOS terms, Vendor will notify Governmental Entity and Governmental Entity may elect to either continue with the Purchasing

Instrument, decline to proceed, or engage in negotiations directly with the CSP, all as facilitated/coordinated by Vendor.

- d. If the Governmental Entity accepts the original CSP TOS terms, the Governmental Entity will notify Vendor in writing and proceed with placing the Purchasing Instrument.
- e. If the Governmental Entity rejects the original CSP TOS terms, Vendor will provide a new CSP and corresponding TOS.

- 3. Delivery and Installation of Software.** In addition to any applicable terms and conditions set forth in the Agreement, except as otherwise set forth in a Purchasing Instrument, to the extent applicable Vendor shall deliver Software to the applicable Governmental Entity and setup and install the Software for use, which may occur by or through online means or other electronic transfer mechanism (such as download), on Licensee Systems specified by the applicable Governmental Entity at no charge. **“Licensee Systems”** means 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. To the extent any Software or related Documentation is mailed or shipped, Vendor shall bear all freight, shipping, handling and insurance costs for the delivery and shall bear all risk of loss, including any losses resulting from any damage to or destruction, in whole or in part, which may occur prior to the delivery.
- 4. Payment Terms.** Payment terms shall be as provided in the Agreement. Any and all terms and conditions related to payment in any EULA or TOS shall be void, including those related to tax and interest. Payment shall be solely the responsibility of and between Vendor and the Governmental Entity making the Purchase. Payment by the applicable Governmental Entity to Vendor for any Software, Cloud Services, or related Services or Deliverables under the Agreement shall constitute a full release and discharge of the Governmental Entity as it relates to any obligations or liabilities related to payment for any Software, Cloud Services, or related Services or Deliverables.

State of Iowa Customer End User License Agreement (“EULA”)

The Governmental Entity signing below and the Software Publisher (“**Publisher**”) signing below enter into this State of Iowa Customer End User License Agreement (“**EULA**”) as of the date of last signature, below. This EULA governs the Governmental Entity’s rights in and related to the Software, and sets forth duties and obligations of the Parties as it relates to the Software. To the extent of any conflict or inconsistency between the terms and conditions of this EULA and the Publisher’s standard contract documents or terms and conditions governing any Software, the terms and conditions of this EULA shall prevail. The Governmental Entity and the Publisher may be referred to individually herein as a “**Party**,” or collectively as the “**Parties**.”

1. **Definitions.** In addition to any other terms defined herein, the following terms shall have the following meanings:
 - 1.1. “**Authorized Contractors**” means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by the Governmental Entity to use, maintain, support, modify, enhance, host, or otherwise assist the Governmental Entity with the Software.
 - 1.2. “**Confidential Information**” means, subject to any applicable federal, State, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this EULA or the Publisher’s standard contract documents or terms and conditions or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.
 - 1.3. “**Deficiency**” means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related the Software, including any failure of the Software to perform or function consistent with applicable Documentation. A deficiency also includes the lack of something essential or necessary for completeness or proper functioning of the Software.
 - 1.4. “**Documentation**” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by the CSP, CSP Contractors, or CSP Personnel for or related to the Governmental Entity’s, or its Authorized Contractor’s, effective use, maintenance, support, configuration, modification, enhancement, or hosting of the Cloud Services.

- 1.5. **“Office of the Chief Information Officer” or “OCIO”** means the Office of the Chief Information Officer of the State of Iowa established by Iowa Code section 8B.
- 1.6. **“Enhancements”** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications or other enhancements made to or with respect to the Software (including any new releases or versions related thereto) and all changes to any Documentation made by the Publisher, directly or indirectly, as a result of such Enhancements.
- 1.7. **“Governmental Entity”** shall mean, unless the context otherwise requires, any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity includes Participating Agencies, agencies, independent agencies, the Judicial Branch, Legislative Branch, Executive Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government.
- 1.8. **“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.
- 1.9. **“Supply Agreement”** means an agreement between the Governmental Entity and an authorized reseller of the Software pursuant to which the Software are purchased. For purposes of this EULA, the Supply Agreement means the State of Iowa Technology Products, Services, and Solutions Agreement, Contract No. 2018 BUS 0105, (**“Agreement”**) between the State of Iowa, acting by and through OCIO, and Insight Public Sector, Inc., a corporation organized under the laws of Illinois, (**“Vendor”**).
- 1.10. **“Publisher Contractor(s)”** means any of Publisher’s authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of a Publisher in performing or providing Software under this EULA.
- 1.11. **“Publisher Personnel”** means officers, directors, employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of a Publisher or any Publisher Contractor performing or providing Software a under this EULA.
- 1.12. **“Purchasing Instrument”** means documentation issued by a Governmental Entity for the purchase of Software, including a **“Purchase Order”** or **“Statement of Work,”** which identifies the Software. A Purchasing Instrument may be executed between the Governmental Entity and an authorized reseller of the Software pursuant to the Supply Agreement.
- 1.13. **“Software”** means any and all other software, programs, applications, modules and components, in object code form, all related Documentation, Enhancements, and Source Code and all copies of the foregoing, as may be more fully identified and described in the applicable Purchasing Instrument and/or in the Publisher’s standard contract documents or terms and conditions.
- 1.14. **“Source Code”** means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. Source Code includes all source code listings, instructions (including

compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.

- 1.15. **“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 EULA.
2. **Relationship between OCIO and other Governmental Entities.** To the extent a Governmental Entity other than OCIO enters into this EULA or is required to sign or otherwise agree to a Publisher’s standard contract documents or terms and conditions, such Governmental Entity shall be solely responsible for any duties and obligations otherwise owed the Publisher in connection therewith. In addition, notwithstanding any other provision of this EULA or the Publisher’s standard contract documents or terms and conditions to the contrary, OCIO bears no obligation or liability for any other Governmental Entity’s losses, liabilities, or obligations, including the Publisher or Publisher Contractor’s failure to perform, arising out of or relating in any way to this EULA or the Publisher’s standard contract documents or terms and conditions. Likewise, the State of Iowa generally bears no obligation or liability for any political subdivision or other non-State entity’s losses, liabilities, or obligations, including the Publisher’s or Publisher Contractor’s failure to perform, arising out of or relating in any way to this EULA or the Publisher’s standard contract documents or terms and conditions.
3. **Term.** Unless and until such license is terminated for cause, and solely to the extent such license is paid for in accordance with the terms of the Supply Agreement, the term (*e.g.*, perpetual, term, subscription) for any Software shall be as provided in the EULA or applicable Purchasing Instrument and continue beyond any expiration or termination of the Supply Agreement.
4. **Grant of License or Use Rights.**
- 4.1. Default Grant of License. Unless otherwise provided in a EULA or Purchasing Instrument, with respect to any Software, Publisher grants to the applicable Governmental Entity a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license.
- 4.2. Supplemental Grant of License.
- 4.2.1. Notwithstanding anything in any Publisher’s standard contract documents or terms and conditions to the contrary, any license, use rights, or other similar rights granted by Publisher, directly or indirectly, to a Governmental Entity pursuant to any Publisher’s standard contract documents or terms and conditions, including as it relates to the Software, such licenses shall include the following additional grant of rights:
- 4.2.1.1. Use, install, host, access, execute, copy, modify, edit, format, translate, maintain, support, repair, enhance, test, demonstrate, and display the Software, and prepare derivative works based on the Software, in all media now known or hereafter created, including the right to host or install the Software on any one or more of the computers, data center locations, networks, Internet or intranet sites, servers or other systems of the Governmental Entity or any of its Authorized Contractors (“**Licensee Systems**”).
- 4.2.1.2. Combine and use the Software with other software, firmware, other code, including public code, and hardware;

- 4.2.1.3. The same grant of rights granted to the Governmental entity to its Authorized Contractors; and
- 4.2.1.4. The right to permit access to and use of the Software and its functions by end users.

The foregoing license grants and rights conferred herein include a license under any current or future patents, copyrights, or other intellectual property interests owned or licensable by Publisher to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Software with any other deliverables or any other hardware or software. If the Governmental Entity makes any modifications or Enhancements to the Software (whether directly or indirectly through an Authorized Contractor), the Governmental Entity shall own such modifications or Enhancements.

- 4.3. Governmental Entities Not Required to Accept or Install Enhancements. The Publisher shall not condition any Governmental Entity's rights or remedies, or the Publisher's duties or obligations, under this EULA or the Publisher's standard contract documents or terms and conditions on the Governmental Entity accepting or installing any Enhancements or additional functionality provided by the Publisher.
- 4.4. Delivery of Source Code. Publisher shall furnish and deliver to the applicable Governmental Entity a complete copy of all Source Code (on a media and in an electronic format acceptable to the Governmental Entity) and updated Documentation (including any written information necessary or desirable for the maintenance, modification, compilation, and/or Enhancement of the Software):
 - 4.4.1. When the Publisher first delivers the Software to the Governmental Entity;
 - 4.4.2. Whenever Vendor delivers, provides, or makes available any Enhancements; or
 - 4.4.3. Within five (5) business days of receiving any written notice from a Governmental Entity requesting such Source Code and Documentation.

All of the rights and privileges granted under this EULA and the Publisher's standard contract documents or terms and conditions with respect to the Software shall apply to the Source Code and Documentation.

- 5. **Payment Terms.** Payment terms shall be in accordance with the Supply Agreement and Purchasing Instrument. Any and all terms and conditions related to payment in the Publisher's standard contract documents or terms and conditions shall be void, including those related to tax and interest. Payment shall be solely the responsibility of and between the Governmental Entity and Vendor. Payment by any Governmental Entity to Vendor for any Software under the Supply Agreement shall constitute a full release and discharge of the Governmental Entity as it relates to any obligations or liabilities related to payment for the Software.

6. **Confidentiality.**

- 6.1. Vendor's Treatment of Confidential Information.
 - 6.1.1. *Limited Access.* Data or information, including Confidential Information of, belonging to, or originating with the Governmental Entity, directly or indirectly, shall at all times remain the property of the Governmental Entity, and the Governmental Entity shall retain exclusive rights thereto and ownership thereof. Publisher, Publisher Contractors, and Publisher Personnel may have access to the Governmental Entity's Confidential Information solely to the extent necessary to

carry out their duties under this EULA and the Publisher's standard contract documents or terms and conditions. Publisher, Publisher Contractors, or Publisher Personnel shall presume all of the Governmental Entity's data or information is considered Confidential Information, hold all data or information in the strictest confidence, and use and permit use of such data or information solely for the purposes of providing the Software and related services or deliverables, subject to any restrictions set forth herein or in any state and federal laws, rules, regulations, standards, and orders applicable either during the term or thereafter. Publisher, Publisher Contractors, and Publisher Personnel shall not gather, store, log, archive, use, or otherwise retain data or information in any manner other than as expressly authorized by this EULA and will not disclose, distribute, sell, commercially or politically exploit, share, rent, assign, lease, or otherwise transfer or disseminate such data or information to any Third Party, except as expressly permitted hereunder or as Publisher may be expressly directed in advance in writing by the Governmental Entity. Publisher, Publisher Contractors, and Publisher Personnel shall not remove from the Governmental Entity's facilities or retain a copy of any such data or information unless such removal or retention is necessary to provide or perform the Software or related services or deliverables, or as is otherwise approved in writing by the Governmental Entity. Publisher will immediately report the unauthorized disclosure of such data or information to the Governmental Entity.

- 6.1.2. *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 Publisher, Publisher may disclose data or information of or belonging to any Governmental Entity to a Third Party in accordance with such law, order, or requirement, subject to the following conditions:
- 6.1.2.1. As soon as becoming aware of such law, order, or requirement, and no less-than five (5) business days prior to any disclosure, Publisher will notify the Governmental Entity in writing, specifying the nature of and circumstances surrounding the contemplated disclosure, and forward any applicable process, including a subpoena, to the Governmental Entity for its review.
 - 6.1.2.2. Publisher will consult with the Governmental Entity on the advisability of taking legally-available steps to resist or narrow any required response or disclosure.
 - 6.1.2.3. Publisher will use best efforts not to release such data or information pending the outcome of any measures taken by the Governmental Entity to contest, oppose, or otherwise seek to limit such disclosure by Publisher or any Third Party ultimately obtaining such data or information. Publisher will cooperate with and provide assistance to the Governmental Entity regarding such measures.
 - 6.1.2.4. Solely to the extent Publisher is required to disclose such data or information to a Third Party, Publisher will furnish only such portion of the data or information as it is required to disclose and will exercise best efforts to obtain an order or other reliable assurances the data or information will be held in confidence by any Third Party to which it is disclosed.

Notwithstanding any such compelled disclosure by Publisher, such compelled disclosure will not otherwise affect Publisher's obligations hereunder with respect to the data or information so disclosed.

- 6.2. Treatment of Publisher's Confidential Information. Notwithstanding anything in this EULA or the Publisher's standard contract documents or terms and conditions to the contrary, any duties or obligations as it relates to any terms and conditions requiring a Governmental Entity to maintain any of the Publisher's or Publisher Contractor's Confidential Information in confidence shall be subject to and limited by applicable State laws, rules and regulations, including, without limitation, Iowa Code Chapter 22, and fair information practices rules. The Governmental Entity shall not be in breach of this EULA or the Publisher's standard contract documents or terms and conditions for any failure to comply with any provision relating to confidential information if the Governmental Entity is complying with or attempting to comply with any such laws, rules, and regulations in so doing. In addition, and notwithstanding anything in this EULA or the Publisher's standard contract documents or terms and conditions to the contrary, a Governmental Entity may disclose the Publisher's or Publisher Contractor's Confidential Information:

- 6.2.1. 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;
- 6.2.2. Pursuant to any applicable laws, rules, or regulations;
- 6.2.3. If the Governmental Entity reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
- 6.2.4. If the Governmental Entity determines the Publisher or Publisher Contractor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any of the Publisher's or or Publisher Contractor's Confidential Information as permitted above, the Governmental Entity shall provide reasonable notice to the Publisher of the circumstances giving rise to such disclosure.

- 6.3. Non-Exclusive Equitable Remedy. Each Party acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or Third Parties to unfairly compete with the other party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of any provisions relating to Confidential Information will constitute a material breach of the agreement between the Parties and be grounds for immediate termination in the exclusive discretion of the non-breaching Party.
- 6.4. Survival. Any/all provisions relating to Confidential Information pursuant to this EULA or the Publisher's standard contract documents or terms and conditions shall survive termination/expiration of the EULA or the Publisher's standard contract documents or terms and conditions.

7. **Limitation of Liability.** If the Publisher's standard contract documents or terms and conditions contain any provision(s) limiting or attempting to limit the Publisher's liability or providing for sole and exclusive remedies in favor of the Publisher, any such provision(s) shall be void, superseded, by or subject to the following, as applicable: Notwithstanding anything in the Publisher's standard contract documents or terms and conditions to the contrary, and solely to the extent permitted by applicable laws, rules and regulations: (a) the maximum liability of either Party for direct damages shall be one (1) times the Contract Value ("**Contract Value**" is defined as the aggregate total compensation to be paid by the Governmental Entity to Vendor under the applicable Purchasing Instrument, including all renewals and extensions or other like continuation thereof); and (b) neither Party shall be liable to the other for consequential, incidental, indirect, special, or punitive damages; provided, however, under no circumstances shall the foregoing limitations or any other provision in any Publisher's standard contract documents or terms and conditions that either limits or attempts to limit the Publisher's liability or provides for sole or exclusive remedies in favor of the Publisher apply to any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:
- 7.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;
 - 7.2. Death, bodily injury, or damage to real or personal property;
 - 7.3. Any contractual obligations of the Publisher pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws; and/or confidential information;
 - 7.4. Claims calling for indemnification of any Governmental Entity or for third-party claims against any Governmental Entity for bodily injury to persons or for damage to real or tangible personal property caused by the Publisher's negligence or willful conduct.

Nothing in this EULA or the Publisher's standard contract documents or terms and conditions to the contrary shall be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to any Governmental Entities, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise.

8. **Indemnification.**

- 8.1. **Publisher.** Notwithstanding anything in the Publisher's standard contract documents or terms and conditions to the contrary, any right or obligation of the Publisher to defend any Governmental Entity or its employees, officers, board members, agents, representatives, officials, or other like individuals shall be modified/amended solely to include an obligation to indemnify and hold harmless the Governmental Entity and its employees, officers, board members, agents, representatives, officials, or other like individuals. For the avoidance of doubt, the Publisher shall have no right to defend any Governmental Entity or its employees, officers, board members, agents, representatives, officials, or other like individuals or be deemed to have been granted settlement authority as it relates to any claims made against any Governmental Entity or its employees, officers, board members, agents, representatives, officials, or other like individuals.
- 8.2. **Governmental Entities.** Notwithstanding anything in the Publisher's standard contract documents or terms and conditions to the contrary, no Governmental Entity or any of their employees, officers, board members, agents, representatives, officials, or other like individuals, shall have any obligation to indemnify, defend, or hold harmless the Publisher, any Publisher Contractor, or Publisher Personnel for any reason whatsoever.

- 9. Choice of Law/Forum.** Notwithstanding anything in the Publisher’s standard contract documents or terms and conditions to the contrary, this EULA and the Publisher’s standard contract documents or terms shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with the Software, including after expiration or termination of this EULA or the Publisher’s standard contract documents or terms, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. The Publisher irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of this EULA and Publisher’s standard contract documents or terms and conditions shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. Any provision in the Publisher’s standard contract documents or terms and conditions calling for arbitration or any other form of alternative dispute resolution shall be void.
- 10. Compliance with Law.** The Publisher represents, warrants, covenants, and promises that the Publisher, Publisher Contractors, and Publisher Personnel have complied with, and shall continue to comply with, and, to the extent applicable the Software will comply with, all applicable federal, state, foreign, and local laws, rules, regulations, codes, standards, ordinances, and orders both generally and in connection with the performance of this Agreement, including the following:
- 10.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State’s written request, the Publisher 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.
 - 10.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
 - 10.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
 - 10.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
 - 10.5. 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.

Notwithstanding anything in the Publisher’s standard contract documents or terms and conditions to the contrary, the Publisher’s failure to fulfill any requirement set forth in this Section shall be regarded as a material breach and the Governmental Entity may cancel, terminate, or suspend, in whole or in part this EULA and the Publisher’s standard contract documents or terms and conditions and any related Purchasing Instrument without penalty or liability. The Publisher shall take such steps as necessary to ensure any Publisher Contractors are bound by the terms and conditions contained in this Section. In addition, as is it relates to the breach of representations, warranties, and obligations of Section 11.1, OCIO or its designee may declare the Publisher ineligible for future State contracts

in accordance with authorized procedures or the Publisher may be subject to other sanctions as provided by law or rule.

11. **Conflicts of Interest.** The Publisher represents, warrants, and covenants that no relationship exists or will exist during the term of this EULA or any Publisher's standard contract documents or terms and conditions that is or may constitute a conflict of interest or appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this EULA and the Publisher's standard contract documents or terms and conditions, and the Publisher shall not engage in any conduct or permit any Third Party from engaging in any conduct that would violate that chapter.
12. **Use of Third Parties.** All subcontracts related to Software provided hereunder shall be subject to the terms and conditions of this EULA and to any conditions of approval that the Governmental Entity may deem necessary. All subcontracts shall contain provisions which allow the Governmental Entity to access the Publisher Contractor's books, documents, and records and for inspections of work, as required of the Publisher herein. No subcontract or delegation of work shall relieve or discharge the Publisher from any obligation, provision, or liability hereunder. The Publisher shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any and all Publisher Contractors. Any action of a Publisher Contractor, which, if done by the Publisher, would constitute a breach this EULA or the Publisher's standard contract documents or terms and conditions, shall be deemed a breach by the Publisher and have the same legal effect.
13. **Independent Contractors.** The Publisher is an independent contractor of the Governmental Entity. No Publisher Personnel shall be considered employees of the Governmental Entity.
14. **Additional Terms.** Notwithstanding any provisions appearing in the Publisher's standard contract documents or terms and conditions to the contrary, none of the following types of provisions shall have any effect on or be enforceable against any Governmental Entity or any of its employees, officers, board members, agents, representatives, officials, or other like individuals, and shall be void. These provisions are any provision:
 - 14.1. Requiring any total or partial compensation or payment for lost profit or liquidated damages by any Governmental Entity, or its employees, officers, board members, agents, representatives, officials, or other like individuals if the EULA is terminated before its ordinary period;
 - 14.2. Requiring any Governmental Entity to maintain any type of insurance either for the benefit of the Governmental Entity or the Publisher's benefit;
 - 14.3. Granting the Publisher a security interest in the property of any Governmental Entity or any of their employees, officers, board members, agents, representatives, officials, or other like individuals;
 - 14.4. Limiting or adding to the time period within which claims can be made or actions can be brought against any Governmental Entity where applicable law, rule, regulation or order establishes a specific time period;
 - 14.5. Limiting or purporting to govern the selection and approval of counsel or approval of any settlement with respect to any claims in which a Governmental Entity or any of its employees, officers, board members, agents, representatives, officials, or other like individuals is named as a party;
 - 14.6. Obligating any Governmental Entity, or any of their employees, officers, board members, agents, representatives, officials, or other like individuals to pay costs of collection or attorney's fees;

- 14.7. Requiring any Governmental Entity or any of their employees, officers, board members, agents, representatives, officials, or other like individuals to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury;
- 14.8. Bestowing any right or incurring any obligation that is beyond the duly granted authority of any Governmental Entity to bestow or incur;
- 14.9. Establishing a presumption of severe or irreparable harm to the Publisher by the actions or inactions of the Governmental Entity;
- 14.10. That fail to comply with all applicable federal, state, and local laws, regulations, ordinances, and orders;
- 14.11. Requiring any Governmental Entity to waive any immunity available to it by law;
- 14.12. Requiring that any Governmental Entity, which is generally tax exempt, be responsible for payment of any taxes, duties, or penalties;
- 14.13. Obligating any Governmental Entity beyond any properly approved, appropriated, or allocated funding;
- 14.14. Permitting unilateral modification of the terms and conditions of this EULA or the Publisher’s standard contract documents or terms and conditions;
- 14.15. Requiring or stating that the terms of the Publisher’s standard contract documents or terms and conditions shall supersede or prevail over the terms of this EULA;
- 14.16. Requiring any Governmental Entity to accept any update, upgrade, or Enhancement or condition the receipt of any update, upgrade, or Enhancement on the receipt of additional payment;
- 14.17. Prohibiting any Governmental Entity from transferring or assigning to any other Governmental Entity any right or interest;
- 14.18. Granting the Publisher, any Publisher Contractor, or any Publisher Personnel the right to audit or examine the books, records, or accounts of the Governmental Entity other than as may be required by law.

[Name]
 (“Governmental Entity”)

[Name]
 (“Publisher”)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Address: _____

Form of Organization: _____

State of Organization: _____

Date:

State of Iowa Customer Terms of Service “TOS”

The Governmental Entity signing below and the Cloud Services Provider (“CSP”) signing below enter into this State of Iowa Customer Terms of Service (“TOS”) as of the date of last signature, below. This TOS governs the Governmental Entity’s use of and access to the Cloud Services, and sets forth duties and obligations of the Parties as it relates to the Cloud Services. To the extent of any conflict or inconsistency between the terms and conditions of this TOS and the CSP’s standard contract documents or terms and conditions governing any Cloud Services, the terms and conditions of this TOS shall prevail. The Governmental Entity and the CSP may be referred to individually herein as a “Party,” or collectively as the “Parties.”

1. **Definitions.** In addition to any other terms defined herein, the following terms shall have the following meanings:
 - 1.1. **“Authorized Contractors”** means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by the Governmental Entity to use, maintain, support, modify, enhance, or otherwise assist the Governmental Entity with the Cloud Services.
 - 1.2. **“Cloud Services”** means the shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or CSP interaction to be provided by the CSP to the Governmental Entity, as may be more fully identified and described in the applicable Purchasing Instrument and/or in the CSP’s standard contract documents or terms and conditions.
 - 1.3. **“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 TOS or the CSP’s standard contract documents or terms and conditions or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.
 - 1.4. **“CSP Contractor(s)”** means any of CSP’s authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of a CSP in performing or providing Cloud Services under this TOS.
 - 1.5. **“CSP Personnel”** means officers, directors, employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of a CSP or any CSP Contractor performing or providing Cloud Services a under this TOS.

- 1.6. **“Customer Data”** means all information, data, materials, or documents (including Confidential Information of or belonging the Governmental Entity) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from the Governmental Entity making purchases hereunder, including its Authorized Contractors, related to this TOS in any way whatsoever, regardless of form, and all information.
- 1.7. **“Deficiency”** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem of any nature whatsoever related the Cloud Services, including any failure of the Cloud Services to perform or function consistent with applicable Documentation. A deficiency also includes the lack of something essential or necessary for completeness or proper functioning of the Cloud Services.
- 1.8. **“Documentation”** means any and all technical information, commentary, explanations, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials created or developed by the CSP, CSP Contractors, or CSP Personnel for or related to the Governmental Entity’s, or its Authorized Contractor’s, effective access to, use of, or configuration of the Cloud Services.
- 1.9. **“Office of the Chief Information Officer” or “OCIO”** means the Office of the Chief Information Officer of the State of Iowa established by Iowa Code section 8B.
- 1.10. **“Enhancements”** shall mean any and all updates, upgrades, bug fixes, patches, additions, modifications or other enhancements made to or with respect to the Cloud Services (including any new releases or versions related thereto) and all changes to any Documentation made by the CSP, directly or indirectly, as a result of such Enhancements.
- 1.11. **“Governmental Entity”** shall mean, unless the context otherwise requires, any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision to that section. The term Governmental Entity includes Participating Agencies, agencies, independent agencies, the Judicial Branch, Legislative Branch, Executive Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government.
- 1.12. **“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.
- 1.13. **“Supply Agreement”** means an agreement between the Governmental Entity and an authorized reseller of the Cloud Services pursuant to which the Cloud Services are purchased. For purposes of this TOS, the Supply Agreement means the State of Iowa Technology Products, Services, and Solutions Agreement, Contract No. 2018 BUS 0105, (**“Agreement”**) between the State of Iowa, acting by and through OCIO, and Insight Public Sector, Inc., a corporation organized under the laws of Illinois, (**“Vendor”**).
- 1.14. **“Purchasing Instrument”** means documentation issued by a Governmental Entity for the purchase of Cloud Services, including a **“Purchase Order”** or **“Statement of Work,”** which identifies the Cloud Services. A Purchasing Instrument may be executed between the

Governmental Entity and an authorized reseller of the Cloud Services pursuant to the Supply Agreement.

- 1.15. **“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.
- 1.16. **“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 EULA.
- 2. Relationship between OCIO and other Governmental Entities.** To the extent a Governmental Entity other than OCIO enters into this TOS or is required to sign or otherwise agree to a CSP’s standard contract documents or terms and conditions, such Governmental Entity shall be solely responsible for any duties and obligations otherwise owed the CSP in connection therewith. In addition, notwithstanding any other provision of this TOS or the CSP’s standard contract documents or terms and conditions to the contrary, OCIO bears no obligation or liability for any other Governmental Entity’s losses, liabilities, or obligations, including the CSP or CSP Contractor’s failure to perform, arising out of or relating in any way to this TOS or the CSP’s standard contract documents or terms and conditions. Likewise, the State of Iowa generally bears no obligation or liability for any political subdivision or other non-State entity’s losses, liabilities, or obligations, including the CSP’s or CSP Contractor’s failure to perform, arising out of or relating in any way to this TOS or the CSP’s standard contract documents or terms and conditions.
- 3. Term.** Unless and until such license is terminated for cause, and solely to the extent such license is paid for in accordance with the terms of the Supply Agreement, the term (*e.g.*, perpetual, subscription) for any Cloud Services shall be as provided in the applicable Purchasing Instrument or other appropriate documentation, and shall continue beyond any expiration or termination of the Supply Agreement.
- 4. Grant of License or Use Rights.**
- 4.1. Notwithstanding anything in any TOS to the contrary, any Cloud Services shall include the following additional grant of rights from the CSP and CSP Contractors:
- 4.1.1. Any and all rights necessary for the Governmental Entity to access and use the Cloud Services for the Governmental Entity’s governmental activities, including as described in any Purchasing Instrument;
- 4.1.2. Any and all rights necessary for the Governmental Entity to access and use the Cloud Services as described in applicable Documentation;
- 4.1.3. The same grant of rights conferred hereunder to the Governmental Entity’s Authorized Contractors to the extent of any quantity ordered (regardless of whether on a “user,” “seat,” “device,” or other similar basis) by the Governmental Entity.
- 4.2. Governmental Entities Not Required to Accept or Install Enhancements. The CSP shall not condition any Governmental Entity’s rights or remedies, or the CSP’s duties or obligations, under this TOS or the CSP’s standard contract documents or terms and conditions on the Governmental Entity accepting or installing any Enhancements or additional functionality provided by the CSP.

- 4.3. **Deficiencies.** The CSP shall be responsible for remediating any Deficiencies within a reasonable time following notice from the Governmental Entity of the Deficiency and otherwise in accordance with any applicable service level agreements.
5. **Payment Terms.** Payment terms shall be in accordance with the Supply Agreement and Purchasing Instrument. Any and all terms and conditions related to payment in the CSP's standard contract documents or terms and conditions shall be void, including those related to tax and interest. Payment shall be solely the responsibility of and between the Governmental Entity and Vendor. Payment by any Governmental Entity to Vendor for any Cloud Services under the Supply Agreement shall constitute a full release and discharge of the Governmental Entity as it relates to any obligations or liabilities related to payment for any Cloud Services.
6. **Confidentiality.** Notwithstanding anything in this TOS or the CSP's standard contract documents or terms and conditions to the contrary, any duties or obligations as it relates to any terms and conditions requiring a Governmental Entity to maintain any of the CSP's or CSP Contractor's Confidential Information in confidence shall be subject to and limited by applicable State laws, rules and regulations, including, without limitation, Iowa Code Chapter 22, and fair information practices rules. The Governmental Entity shall not be in breach of this TOS or the CSP's standard contract documents or terms and conditions for any failure to comply with any provision relating to confidential information if the Governmental Entity is complying with or attempting to comply with any such laws, rules, and regulations in so doing. In addition, and notwithstanding anything in this TOS or the CSP's standard contract documents or terms and conditions to the contrary, a Governmental Entity may disclose the CSP's or CSP Contractor's Confidential Information:
- 6.1. 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;
 - 6.2. Pursuant to any applicable laws, rules, or regulations;
 - 6.3. If the Governmental Entity reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
 - 6.4. If the Governmental Entity determines the CSP or CSP Contractor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any of the CSP's or or CSP Contractor's Confidential Information as permitted above, the Governmental Entity shall provide reasonable notice to the CSP of the circumstances giving rise to such disclosure.

The Governmental Entity shall remain the sole and exclusive owner of any and all Customer Data supplied or provided by it, directly or indirectly, to the CSP in connection with this TOS or the CSP's standard contract documents or terms and conditions, including any Customer Data stored, processed, or transmitted in, by, or through the Cloud Services. Each Party acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or third parties to unfairly compete with the other party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of any provisions relating to Confidential Information will constitute a material breach of the agreement between the Parties and be grounds for immediate termination in the

exclusive discretion of the non-breaching Party. Any/all provisions relating to Confidential Information or Customer Data conferring rights, benefits, privileges, indemnifications, or other like guarantees on or to any Governmental Entity pursuant to this TOS or the CSP's standard contract documents or terms and conditions shall survive termination/expiration of the TOS or the CSP's standard contract documents or terms and conditions.

7. **Limitation of Liability.** If the CSP's standard contract documents or terms and conditions contain any provision(s) limiting or attempting to limit the CSP's liability or providing for sole and exclusive remedies in favor of the CSP, any such provision(s) shall be void, superseded, by or subject to the following, as applicable: Notwithstanding anything in the CSP's standard contract documents or terms and conditions to the contrary, and solely to the extent permitted by applicable laws, rules and regulations: (a) the maximum liability of either Party for direct damages shall be one (1) times the Contract Value ("**Contract Value**" is defined as the aggregate total compensation to be paid by the Governmental Entity to Vendor under the applicable Purchasing Instrument for the Cloud Services, including all renewals and extensions or other like continuation thereof); and (b) neither Party shall be liable to the other for consequential, incidental, indirect, special, or punitive damages; provided, however, under no circumstances shall the foregoing limitations or any other provision in any CSP's standard contract documents or terms and conditions that either limits or attempts to limit the CSP's liability or provides for sole or exclusive remedies in favor of the CSP apply to any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:
- 7.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;
 - 7.2. Death, bodily injury, or damage to real or personal property;
 - 7.3. Any contractual obligations of the CSP pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws; confidential information; and/or Security Breach;
 - 7.4. Claims calling for indemnification of any Governmental Entity or for third-party claims against any Governmental Entity for bodily injury to persons or for damage to real or tangible personal property caused by the CSP's negligence or willful conduct.

Nothing in this TOS or the CSP's standard contract documents or terms and conditions to the contrary shall be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State of Iowa or other Governmental Entities, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise.

8. **Indemnification.**

- 8.1. **CSP.** Notwithstanding anything in the CSP's standard contract documents or terms and conditions to the contrary, any right or obligation of the CSP to defend any Governmental Entity or its employees, officers, board members, agents, representatives, officials, or other like individuals shall be modified/amended solely to include an obligation to indemnify and hold harmless the Governmental Entity and its employees, officers, board members, agents, representatives, officials, or other like individuals. For the avoidance of doubt, the CSP shall have no right to defend any Governmental Entity or its employees, officers, board members, agents, representatives, officials, or other like individuals or be deemed to have been granted settlement authority as it relates to any claims made against any Governmental Entity or its employees, officers, board members, agents, representatives, officials, or other like individuals.

- 8.2. **State of Iowa.** Notwithstanding anything in the CSP's standard contract documents or terms and conditions to the contrary, no Governmental Entity or any of their employees, officers, board members, agents, representatives, officials, or other like individuals, shall have any obligation to indemnify, defend, or hold harmless the CSP, any CSP Contractor, or CSP Personnel for any reason whatsoever.
9. **Choice of Law/Forum.** Notwithstanding anything in the CSP's standard contract documents or terms and conditions to the contrary, this TOS and the CSP's standard contract documents or terms shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with the Cloud Services, including after expiration or termination of this TOS or the CSP's standard contract documents or terms, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. The CSP irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of this TOS or the CSP's standard contract documents or terms and conditions shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. Any provision in the CSP's standard contract documents or terms and conditions calling for arbitration or any other form of alternative dispute resolution shall be void.
10. **Privacy/Security Terms and Conditions.**
- 10.1. Data Ownership. All Customer Data shall be and remain the sole and exclusive property of the Governmental Entity.
- 10.2. CSP's access to and use of Customer Data. The CSP shall not use any Customer Data for any purpose other than fulfilling the CSP's express duties and obligations under the TOS and CSP's standard contract documents or terms and conditions, in accordance with the terms and conditions set forth herein, and any applicable laws, rules, and regulations.
- 10.3. Data Protection. The CSP shall safeguard the confidentiality, integrity, and availability of Customer Data. In so doing, the CSP represents, warrants, covenants, and otherwise promise that:
- 10.3.1. The Cloud Services will perform in accordance with applicable control standards and frameworks as detailed on any CSP website, including but not limited to any webpage(s) related to "compliance," as it exists at the time of each purchase.
- 10.3.2. All Customer Data shall be encrypted at rest and in transit with controlled access. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, the CSP is responsible for encryption of Customer Data in their possession. Additionally, the CSP shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless the Governmental Entity approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.
- 10.3.3. Storage of Customer Data at rest and all backups shall occur solely in the continental United States of America.

- 10.3.4. The CSP will not access, store, process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.
- 10.3.5. During the term, the Governmental Entity or its Authorized Contractor(s) may perform security audits/scans of the CSP's environment, including unannounced penetration and security tests. The Governmental Entity's regulators (and any federal agencies providing grant funds used to pay for the Cloud Services, in whole or in part, or with which any Customer Data originated) shall have the same right upon request. The CSP and CSP Contractors agree to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.
- 10.4. Security Logs. As it relates to the Cloud Services, the CSP and CSP Contractors shall provide security logs and reports to the Governmental Entity or its Authorized Contractors in a mutually agreeable format upon request. Such reports shall include at least latency statistics, user access summaries, user access IP address summaries, user access history and security logs for all Customer Data.
- 10.5. Backups. As it relates to any Cloud Services, the CSP is responsible for maintaining a backup of Customer Data and shall maintain a contemporaneous backup of Customer Data that may be recovered within two (2) hours at any point in time. Additionally, the CSP 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.
- 10.6. Import and Export of Customer Data. To the extent Customer Data is stored, retained, or otherwise maintained in electronic format in connection with any Cloud Services, the Governmental Entity or its Authorized Contractors shall have the ability to import or export data or information, including Customer Data, in whole or in part to or from the Cloud Services, at no charge, and in such formats as may be acceptable to the Governmental Entity, without interference from the CSP, CSP Contractors, or CSP Personnel. In the event a Governmental Entity is unable to successfully import or export Customer Data in whole or in part, the CSP or CSP Contractor shall assist the Governmental Entity in doing so at no charge. As it relates to the export of such data and information, the CSP or CSP Contractor shall provide to or ensure the Governmental Entity has obtained an export of any requested Customer Data within a timeframe mutually agreed between the Parties in the format specified by the Governmental Entity.
- 10.7. Retention/Return/Destruction of Customer Data. Upon termination or expiration of the Cloud Services, the CSP may be required to promptly return or destroy, at the Governmental Entity's sole option, all Customer Data, and provide a notarized written statement to the Governmental Entity certifying that all Customer Data under or in the CSP's control or possession has been delivered to the Governmental Entity or destroyed, as requested by the Governmental Entity. To the extent the CSP is required to destroy Customer Data, such Customer Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. The CSP agrees that in connection with any termination or expiration of the Cloud Services, the CSP shall not take any action to intentionally erase any Customer Data without first providing prior notice to and consent from the applicable Governmental Entity in writing.
- 10.8. Personnel Safeguards.
- 10.8.1. *Background Checks.*

- 10.8.1.1. Floor. The CSP shall conduct nationwide criminal background checks on CSP Personnel and shall not utilize any such personnel who have been convicted of any crime of dishonesty, including fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to one (1) year is an authorized penalty.
- 10.8.1.2. Additional Screening. Governmental Entities reserve the right to subject CSP 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. CSP Personnel may be required to authorize the release of the results of criminal history checks, including those through the FBI, to one or more Governmental Entities. Such background checks may be conducted by the Governmental Entity or its Authorized Contractor. A Governmental Entity may also require the CSP to conduct a work history or financial review of CSP Personnel. The CSP shall provide Governmental Entities with these background check results in a mutually agreeable form and manner prior to the commencement of any engagement by CSP Personnel.
- 10.8.1.3. The CSP shall be responsible for payment of all costs associated with any and all background checks to which CSP Personnel are subjected, regardless of whether such background checks are conducted by CSP, directly or indirectly, or a Governmental Entity or its Authorized Contractor.
- 10.8.2. *Security Awareness Training.* The CSP shall promote and maintain an awareness of the importance of securing Customer Data among CSP Personnel.
- 10.8.3. *Separation of Job Duties.* The CSP shall diligently monitor and enforce separation of job duties, require all CSP Personnel to execute non-disclosure agreements, and limit access to and knowledge of Customer Data to those CSP Personnel to which such access and knowledge is absolutely necessary to provide the Cloud Services.
- 10.9. Security Breaches.
 - 10.9.1. *Reporting.* The CSP or CSP Contractors will report to the Governmental Entity and OCIO within two (2) hours of the CSP’s or CSP Contractor’s discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent to the Governmental Entity 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.
 - 10.9.2. *Investigations in Response to Actual or Suspected Breach.* The CSP and CSP Contractors agree, at their sole expense, to take all steps necessary to promptly remedy any actual or suspected Security Breach and to fully cooperate with the Governmental Entity and OCIO in resolving and mitigating any damage from

such actual or suspected Security Breach at the CSP's sole cost. At no additional cost to the Governmental Entity or the State of Iowa, the CSP and CSP Contractor will fully cooperate with the 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, the CSP and CSP Contractor will immediately institute appropriate controls to maintain and preserve all electronic evidence relating to such actual or suspected Security Breach in accordance with industry best practices. The CSP and CSP Contractor will deliver to the 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. The CSP agrees that it will not notify any regulatory authority relating to any actual or suspected Security Breach unless the Governmental Entity specifically requests the CSP do so in writing.

10.9.3. *Additional Remedies in the Event of Actual Breach.* Upon the applicable Governmental Entity's determination that a Security Breach involving or relating to Customer Data has occurred, the CSP and CSP Contractors shall fully cooperate with the Governmental Entity and OCIO in fully rectifying/responding to such Security Breach, including notifying all of the Governmental Entity's affected users. The Governmental Entity shall determine, in its sole discretion, the content and means of delivery of any such notifications. Notwithstanding any provision of the CSP's standard contract documents or terms and conditions to the contrary, the CSP will be solely responsible and liable for all costs, expenses, damages, fines, penalties, taxes, assessments, legal fees, claims, service fees, and any and all other amounts of any kind or nature whatsoever (including the reasonable value of time of the Iowa Attorney General's Office or the costs, expenses and attorney fees of other counsel retained by the State or any other Governmental Entity) related to, arising out of, or incurred by or on behalf of any Governmental Entity as a result of, any Security Breach caused directly or indirectly, in whole or in part, by CSP Personnel, including the cost of: notifying affected individuals and businesses or reporting to applicable regulators or Governmental Entities (including preparation, printing, mailing and delivery); opening and closing accounts, printing new checks, embossing new cards; forensic and other audits, investigations, public relations services, call center services, websites and toll-free numbers for assisting affected individuals; obtaining credit-monitoring services and identity-theft insurance for any person or entity whose information has or may have been acquired or compromised; and all other costs associated with corrective or other actions that are taken to mitigate or address the Security Breach. The CSP will reimburse or pay to the Governmental Entity all such expenses, fees, damages, and all other amounts within fifteen (15) business days of the date of any written demand or request delivered to the CSP.

10.10. Ancillary Agreements and Non-Disclosure Agreements. The CSP or CSP Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to the Governmental Entity using the Cloud Services, such as a Business Associate Agreement ("BAA") or Criminal Justice Information System

(“CJIS”) Security Addendum, or any other non-disclosure or confidentiality agreements deemed necessary by the Governmental Entity (“**Ancillary Agreement(s)**”).

10.11. The CSP shall include the terms and conditions in this Section in all of its contracts, subcontracts, or other agreements with CSP Contractors, and shall remain responsible to applicable Governmental Entities for all of the obligations or liabilities set forth herein or related to this Section even if it fails to do so.

11. Compliance with Law. The CSP represents, warrants, covenants, and promises that the CSP, CSP Contractors, and CSP Personnel have complied with, and shall continue to comply with, and, to the extent applicable the Cloud Services will comply with, all applicable federal, state, foreign, and local laws, rules, regulations, codes, standards, ordinances, and orders both generally and in connection with the performance of this Agreement, including the following:

- 11.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State’s written request, the CSP 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.
- 11.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
- 11.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
- 11.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 11.5. 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.

Notwithstanding anything in the CSP’s standard contract documents or terms and conditions to the contrary, the CSP’s failure to fulfill any requirement set forth in this Section shall be regarded as a material breach and the Governmental Entity may cancel, terminate, or suspend, in whole or in part this TOS and the CSP’s standard contract documents or terms and conditions and any related Purchasing Instrument without penalty or liability. The CSP shall take such steps as necessary to ensure any CSP Contractors are bound by the terms and conditions contained in this Section. In addition, as is it relates to the breach of representations, warranties, and obligations of Section 11.1, OCIO or its designee may declare the CSP ineligible for future State contracts in accordance with authorized procedures or the CSP may be subject to other sanctions as provided by law or rule.

12. Conflicts of Interest. The CSP represents, warrants, and covenants that no relationship exists or will exist during the term of this TOS or the CSP’s standard contract documents or terms and conditions that is or may constitute a conflict of interest or appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this TOS and the CSP’s standard contract documents or terms and conditions, and the CSP shall not engage in any conduct or permit any Third Party from engaging in any conduct that would violate that chapter.

13. Use of Third Parties. All subcontracts related to Cloud Services provided hereunder shall be subject to the terms and conditions of this TOS and to any conditions of approval that the Governmental Entity may deem necessary. All subcontracts shall contain provisions which allow the Governmental

Entity to access the CSP Contractor's books, documents, and records and for inspections of work, as required of the CSP herein. No subcontract or delegation of work shall relieve or discharge the CSP from any obligation, provision, or liability hereunder. The CSP shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any and all CSP Contractors. Any action of a CSP Contractor, which, if done by the CSP, would constitute a breach this TOS or the CSP's standard contract documents or terms and conditions, shall be deemed a breach by the CSP and have the same legal effect.

14. **Independent Contractors.** The CSP is an independent contractor of the Governmental Entity. No CSP Personnel shall be considered employees of the Governmental Entity.
15. **Additional Terms.** Notwithstanding any provisions appearing in the CSP's standard contract documents or terms and conditions to the contrary, none of the following types of provisions shall have any effect on or be enforceable against any Governmental Entity or any of its employees, officers, board members, agents, representatives, officials, or other like individuals, and shall be void. These provisions are any provision:
 - 15.1. Requiring any total or partial compensation or payment for lost profit or liquidated damages by any Governmental Entity, or its employees, officers, board members, agents, representatives, officials, or other like individuals if the TOS is terminated before its ordinary period;
 - 15.2. Requiring any Governmental Entity to maintain any type of insurance either for the benefit of the Governmental Entity or the CSP's benefit;
 - 15.3. Granting the CSP a security interest in the property of any Governmental Entity or any of their employees, officers, board members, agents, representatives, officials, or other like individuals;
 - 15.4. Limiting or adding to the time period within which claims can be made or actions can be brought against any Governmental Entity where applicable law, rule, regulation or order establishes a specific time period;
 - 15.5. Limiting or purporting to govern the selection and approval of counsel or approval of any settlement with respect to any claims in which a Governmental Entity or any of its employees, officers, board members, agents, representatives, officials, or other like individuals is named as a party;
 - 15.6. Obligating any Governmental Entity, or any of their employees, officers, board members, agents, representatives, officials, or other like individuals to pay costs of collection or attorney's fees;
 - 15.7. Requiring any Governmental Entity or any of their employees, officers, board members, agents, representatives, officials, or other like individuals to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury;
 - 15.8. Bestowing any right or incurring any obligation that is beyond the duly granted authority of any Governmental Entity to bestow or incur;
 - 15.9. Establishing a presumption of severe or irreparable harm to the CSP by the actions or inactions of the Governmental Entity;
 - 15.10. That fail to comply with all applicable federal, state, and local laws, regulations, ordinances, and orders;
 - 15.11. Requiring any Governmental Entity to waive any immunity available to it by law;

- 15.12. Requiring that any Governmental Entity, which is generally tax exempt, be responsible for payment of any taxes, duties, or penalties;
- 15.13. Obligating any Governmental Entity beyond any properly approved, appropriated, or allocated funding;
- 15.14. Permitting unilateral modification of the terms and conditions of this TOS or the CSP’s standard contract documents or terms and conditions;
- 15.15. Requiring or stating that the terms of the CSP’s standard contract documents or terms and conditions shall supersede or prevail over the terms of this TOS;
- 15.16. Requiring any Governmental Entity to accept any update, upgrade, or Enhancement or condition the receipt of any update, upgrade, or Enhancement on the receipt of additional payment;
- 15.17. Prohibiting any Governmental Entity from transferring or assigning to any other Governmental Entity any right or interest;
- 15.18. Granting the CSP, any CSP Contractor, or any CSP Personnel the right to audit or examine the books, records, or accounts of the Governmental Entity other than as may be required by law.

[Name]
 (“Governmental Entity”)

[Name]
 (“Cloud Services Provider” or “CSP”)

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Address: _____
Form of Organization: _____
State of Organization: _____
Date: _____

STATEMENT OF WORK #001

Please Read: Instructions/guidance for using this template to draft a Statement of Work are in red italics. Delete all such instructions after the appropriate text has been added to the Statement of Work. This is only a sample, thus, not all of the sections set forth below may be applicable, depending on the project/circumstances.

[Date]

**U.S. Communities Government Purchasing Alliance 4400006644
(RFP2000001701)
Statement of Work # [SOW #]**

[PROJECT NAME]

This Purchasing Instrument/Statement of Work (“SOW”) incorporates the terms and conditions of the State of Iowa and Insight Public Sector, Inc., Technology Products, Services, and Solutions Master Agreement, Contract No. 2018 BUS 0105, (“**Agreement**”) between the State of Iowa, acting by and through the Office of the Chief Information Officer (“**OCIO**”), and Insight Public Sector, Inc., a corporation organized under the laws of the State of Illinois (“**Vendor**” or “**Contractor**” or “**Insight**”). This SOW is between Vendor and the Governmental Entity identified in the signature block, below, and is effective as of the date of last signature below. Capitalized terms used but not defined herein are as defined in the Agreement. The applicable Governmental Entity and Vendor may be referred to herein individually as a “**Party**” or collectively as the “**Parties.**”

1 PARTIES

“Insight”

Insight Public Sector, Inc.
6820 S. Harl Avenue
Tempe, AZ 85283
Attn: [insert SAE name (or LOB Mgr if no SAE)]

“Governmental Entity”

[Governmental Entity name long]
[Other Party Address]
[City, State, Zip]
Attn: [insert name]

2 SCOPE OF SERVICES

Insight shall perform the following Services under the terms and conditions of this Statement of Work (“SOW”).

2.1 Service Description

The following is a high-level description of the Services Insight will provide:

[add bullets from Objectives section of input file]

- [Bullet 1]
 - [Bullet 2]
 - [Bullet 3]
 - [Bullet 4]

2.1.1 Location

The Services will be performed at the following Governmental Entity location(s):

- [Insert address of physical location(s) of where the work is to be performed]

[or]

The Services will be performed remotely.

2.1.2 Scope and Approach

Insight will perform the following Services:

[Phase]

[provide overview of each phase scope/approach]

[Sub-Phase]

- [Bullet 1]
 - [Bullet 2]

[Sub-Phase]

- [Bullet 1]
 - [Bullet 2]

[subhead 3]

2.2 Project Management

Insight will provide the following project management and technical direction:

[Use list below, based on PMO resource included in Pricing Tool. If any bullets need to be added for a particular project, add them to the Project Coordinator or Project Manager section, depending on which is included for the SOW]

[use for PC or Sr. PC]

Project Coordinator

- Serve as the primary point of contact on all project issues, needs, and concerns
- Provide resource management
- Facilitate introduction kickoff call to review scope and project expectations
- Manage Governmental Entity expectations throughout the life of the project
- Schedule and coordinate the necessary resources to support the project
- Monitor, manage, and communicate changes to the project's scope, budget, schedule, and resources; complete Change Request (CR) documentation as required; and obtain signed CRs for mutually agreed upon changes
- Facilitate closeout meeting, as needed

[use for PM or Sr. PM]

Project Manager

- Serve as the primary point of contact on all project issues, needs, and concerns
- Provide team leadership and guidance
- Provide resource management
- Facilitate kickoff meeting to review scope and project expectations, discuss IT infrastructure design, assess Governmental Entity readiness (hardware, software, infrastructure pre-requisites, etc.), discover any possible problems/risks, formulate an appropriate work breakdown structure for primary project tasks, and create project timeline/schedule (including potential downtimes and maintenance windows)
- In conjunction with Governmental Entity, measure and communicate weekly progress against mutually agreed-upon milestones

- Maintain a project log to proactively identify and communicate key decisions made, actions items to be completed, risks/issues that may impact scope, schedule, and lessons learned; and mitigate and/or escalate any critical risks or issues under Insight's control, as needed
- Manage Governmental Entity expectations and satisfaction throughout the life of the project
- Schedule and coordinate the necessary resources to support the project
- Schedule and conduct project team update/status meetings
- Prepare written status reports for Governmental Entity at mutually agreed-upon intervals
- Monitor, manage and communicate changes to the project's scope, budget, schedule, and resources; complete Change Request (CR) documentation as required; and obtain signed CRs for mutually agreed upon changes
- Facilitate closeout meeting, as needed
- To the extent directed by the Governmental Entity, coordinate and facilitate compliance with project oversight and management requirements, including facilitating and coordinating compliance with OCIO IT Governance Project Oversight/Management requirements
- To the extent designated by the agency as the official Project Manager for the project, meet the minimum qualifications required by IT Governance Documents, including those related to Project Management qualifications/experience, which applicable IT Governance Documents must be supplied by the applicable Governmental Entity at the outset of the engagement

[add following if Program Manager also included]

Program Manager

- Provide oversight and act as the primary escalation point for the program
- Maintain contact and communication with all Insight project team members and project stakeholders to ensure conformance with requirements of project delivery and Governmental Entity expectations
- Develop a program-level governance model and work with Governmental Entity to obtain endorsement for successful implementation
- Oversee program to ensure consistency of project practices (change orders, issue management, risk management, decision tracking, etc.); follow and contribute to standard Governmental Entity implementation methodologies and best practices
- Work with Governmental Entity to identify the program success criteria and document dependencies, risks, and issues associated with the successful completion of the program
- Develop program communications plan and associated documents; drive cross-project delivery consistency and coordinate cross-project communications
- Maintain frequent program-level written and verbal communications with all program stakeholders and participants ensuring communications are understood by recipients
- Identify and manage program-level dependencies and critical paths
- Identify, escalate, and document program issues as necessary
- Provide team leadership and guidance throughout the program
- Work closely with the Insight Project Managers and key Governmental Entity team members and stakeholders to ensure that the program is effectively executed
- Provide a Program Schedule highlighting Deliverables, corresponding milestones, planned project events, and timelines
- Deliver program-level summaries at agreed-upon intervals

2.3 Deliverables

Insight will provide the following Deliverables:

Overall Project

[copy deliverables list from input file if one is provided]

- [Bullet 1]

Project Management

[Add following deliverables based on PMO resource included in Pricing Tool]

[use for PC or Sr. PC]

Project Coordinator

- Communications/escalation contact list

[use for PM or Sr. PM]

Project Manager

- Communications/escalation contact list
- Weekly status reports on the process of the project

[add following if Program Manager also included]

Program Manager

- Weekly status reports on the process of the program

[or – if no PC/PM included and no deliverables]

Deliverables, if any, will be agreed upon by both parties in writing.

2.4 Insight Responsibilities

Insight is responsible for the following:

General Responsibilities.

1. [add any other Insight responsibilities here]
2. [update as necessary for this project] Insight will provide the applicable and necessary labor, supervision, maintenance, consultation, and/or materials to perform the Services and provide the Deliverables described in this SOW. For purposes of this SOW, “Deliverables” means any materials produced in the course of performing Services listed or specifically required to be delivered to Governmental Entity under this SOW.

Project-Specific Security Responsibilities. [Each of the following are examples and should be modified and updated as necessary based on applicability to this project and Governmental Entity’s project Security requirements. Delete if it does not pertain to the services being offered or Governmental Entity does not have a requirement.]

1. **Encryption.** [include and update as necessary, if applicable to this project] [Insight shall be responsible for encryption of Customer Data in their possession, including at rest and in transit, including consistent with industry standards of not-less-than TLS 1.2. Insight 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 portable device that does not satisfy these standards.]

2. Data location. [include and update as necessary, if applicable to this project] [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. Insight shall not allow Insight Personnel to store, process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.]

3. Technical Support. [include and update as necessary, if applicable to this project and if Insight will have access to Customer Data remotely for technical support] [Insight may not provide technical user support on a 24/7 basis using a Follow the Sun model.]

4. Import/Export of Data. [include and update as necessary, if applicable to this project if Customer Data is stored, retained, or otherwise maintained in electronic format in connection with any hosting, infrastructure, or other similar Services]
 - a. Customer Data shall be able to be imported/exported in accordance with the following specific formats:
 - [Insert specific import/export data format];
 - [Insert specific import/export data format];
 - [Insert specific import/export data format].

 - b. Insight shall provide to or ensure the applicable Governmental Entity has obtained an export of any requested data or information within [] days of any request in the format specified by the Governmental Entity.

5. Retention of Customer Data. [include and update as necessary, if applicable to this project] Insight agrees Insight shall not take any action to intentionally erase any Customer Data until [identify specific retention requirements here].

6. Security Audits. [include and update as necessary, if applicable to this project] During the applicable Governmental Entity’s use of the Services hereunder, Governmental Entity may perform the following security audits/scans of Insight’s environment upon reasonable notice and through mutually agreed upon coordination with Insight’s Information Security Team:
 - a. [identify specific security audit/scan requirements here];
 - b. [identify specific security audit/scan requirements here];
 - c. [identify specific security audit/scan requirements here].

7. Reporting. [include and update as necessary, if applicable to this project] Insight will report to the applicable Governmental Entity and OCIO within [identify specific breach-notification timeframe here; the default under the Agreement is one day].

8. Business Continuity/Disaster Recovery. [include and update as necessary, if applicable to this project] Insight shall maintain a Business Continuity and Disaster Recovery Plan (“Plan”) for the Services under this Statement of Work. The applicable Governmental Entity has identified the following, specific requirements applicable to the Plan:
 - a. [identify specific business continuity/disaster recovery requirement here];
 - b. [identify specific business continuity/disaster recovery requirement here];
 - c. [identify specific business continuity/disaster recovery requirement here].

2.5 *Governmental Entity Responsibilities*

The estimated duration and associated fees presented in this SOW are based on the following Governmental Entity Responsibilities. Should any element(s) of these be lacking during execution of Services or provisioning of Deliverables, additional time, associated fees, and expenses may be required.

Governmental Entity is responsible for the following:

1. [add any other Governmental Entity responsibilities here]
2. [include for all Office Productivity SOWs, except Azure]
Governmental Entity will appoint Insight as the Microsoft “Partner of Record” for the Office 365 environment and will maintain this designation for a period of no less than 12 months after completion of the production migration project.
3. [include for all Azure SOWs]
Governmental Entity will appoint Insight as the Microsoft “Partner of Record” for all Azure subscriptions and will maintain this designation for a period of no less than 12 months after completion of the project.
4. Governmental Entity shall be responsible to provide a project point of contact with decision-making authority to support the scope of Services and Deliverables described in this SOW and shall ensure that the proper personnel are reasonably available to review each completed Milestone, Service or Deliverable upon notification of completion by Insight.
5. If applicable, Governmental Entity will provide site contacts for each Governmental Entity location. Each such contact will provide Insight with applicable details regarding his/her site, and will coordinate or perform required onsite work, as reasonably requested by Insight and Governmental Entity IT, for the duration of the project.
6. Governmental Entity will provide Insight the necessary access to internal experts, location(s), critical systems, applications, workspace, and equipment (telephones, faxes, LAN connectivity, printer access, dial-out modem lines, passwords, keys, etc., as applicable) required at each field location to complete the project. Access to Governmental Entity systems will be provided to Insight via either onsite direct access or remote/VPN access. If Governmental Entity does not allow remote/VPN access to Governmental Entity systems and remote work is necessary, then Governmental Entity will make local resources available to be utilized by Insight to accommodate for this lack of access. If Governmental Entity cannot provide access or local resources, then additional project duration, labor hours, and others costs may be incurred and due to Insight by Governmental Entity.
7. If applicable, Governmental Entity will provide the necessary hardware, software, tools, and permits required for the successful completion of the project prior to Insight’s arrival. Further, Governmental Entity is responsible for all licensing requirements to be compliant per their own agreements.
8. Governmental Entity is responsible for all product and material, including distribution and transport of Governmental Entity-owned product and material, unless otherwise specified in writing. Product and material is defined as any item purchased, owned and/or provided by Governmental Entity (or others) that Insight is required to use for fulfillment of any Services and Deliverables described herein.
9. If applicable, Governmental Entity is responsible for providing adequate and secure onsite storage for all Governmental Entity-owned product and material unless otherwise specified in writing.
10. If applicable, Governmental Entity will be responsible for: (a) back-up and/or data migration of existing data unless otherwise agreed to by Insight; (b) computer system and network designs; and (c) component selection as it relates to the performance of the computer system and/or the network.
11. Governmental Entity is responsible for maintaining physical, electronic, and procedural controls to ensure the confidentiality, integrity, and availability of Governmental Entity’s information on all applicable Governmental Entity computing systems used to store or transmit Governmental Entity’s information, in accordance with current applicable industry standards and best practices.
12. Governmental Entity is responsible for managing and maintaining: (a) reasonable firewalls and, if appropriate, encryption; (b) regular back-ups of Governmental Entity’s information; and (c) least-privileged-based access controls (including provisioning, de-provisioning, authentication, authorization, and accountability controls).
13. Governmental Entity and its employees, contractors, and agents will: (a) cooperate with any reasonable request of Insight in order to perform or provide Services and Deliverables as described, (b) provide input throughout the project and will review progress at review meetings requested by Insight; and (c) provide Insight with access to all of Governmental Entity’s information, documentation and technology, necessary for Insight to perform the Services and Deliverables as described, including a list of all Governmental Entity and third-party contacts necessary for Insight to do so. Such cooperation, input, access, and license are critical to this project, and Governmental Entity’s representation at all review meetings is essential. If applicable, Insight is hereby granted and shall have a nonexclusive, royalty-free license, during the term of the Services, to access and use the Governmental Entity Technology solely for the purposes

of delivering the Services or Deliverables to Governmental Entity. “Governmental Entity Technology” shall mean any intellectual property owned by Governmental Entity that will be used by Insight in performing the Services or providing the Deliverables under this SOW.

2.6 Resource Team

Project Sponsor, [Governmental Entity name long] – [Enter Project Sponsor's full name]
 Services Account Executive, Insight – [Enter Solutions Sales Executive's name]
 Account Executive, Insight – [Enter the Account Executive's full name]
 Services Director, Insight – [Enter Regional Delivery Director or Mgd Svcs Director name]
 Services Manager, Insight – [Enter LOB Manager name]
 SOW Prepared by, Insight – [Enter name of person who scoped SOW and Sol Cons]

2.7 Change Order Procedure

If an alteration to the scope of work in this SOW, including Services, hours needed to complete work, milestones and related pricing, is identified by either party; it shall be brought to the attention of the other party’s management by completing and submitting a change order pursuant to and in accordance with the process set forth in Section 3.1.4 of the Agreement. A sample change order is attached to and incorporated into this SOW as Attachment 1. Each Party’s respective management will review the form to determine whether a modification to the scope is necessary and what effect the implementation of such change may have on the project. If any such change causes an increase or decrease in the cost or time required for performance of the work, the price and/or delivery schedule shall be equitably adjusted and identified within the change order. Estimated turn-around time for such determination is 5 days. If both Parties mutually agree to implement the change in scope, the change order will be incorporated into the SOW as an addendum when signed by authorized representatives of both Parties. If either Party rejects a request for a change in scope or if the Parties cannot agree on an adjustment, Insight shall proceed to fulfill its obligations in accordance with this SOW as previously agreed upon.

Note: When contract 4400006644 (RFP2000001701) expires, no Change Requests for additional Services will be accepted.

3 SCHEDULE

3.1 Start Date

The project start date will be mutually determined upon receipt of this signed SOW and, if applicable, a valid Purchase Order (PO). A minimum lead time of 20 business days from receipt of both documents may be required for scheduling purposes.

[CHOOSE ONE OF THE FOLLOWING AND DELETE OTHERS]

3.2 Estimated Duration

The Project’s duration will be approximately _____ [days, weeks, months, etc.].

[or]

3.3 Milestones

[Note: if you use language for milestones, do not include any acceptance language. If Governmental Entity requests this, then you can add standard Acceptance Criteria language from the Special Language file on the BusOps drive.]

Insight will use commercially reasonable efforts to meet the completion dates set forth below. **[Note: Use the following optional language if Governmental Entity requests retained amounts (which are not to exceed 15%) Services/Finance Approval is required for any SOW which requires Retained Amounts] [Optional]** Based on the mutual agreement of the Parties, to secure Insight’s performance under this Agreement, a Governmental Entity may retain the amount specified the table below in the (“**Retained Amounts**”) (up to fifteen percent (15%)) column until any performance deficiencies experienced during the applicable billing cycle have been remediated, or until any agreed-upon/defined Deliverables have been fully performed or delivered and the applicable Governmental Entity’s delivery of written notice of Final Acceptance has been tendered.**[optional]**

Project Milestone/Description	Estimated Timeframe	[Optional] Retained Amounts
		10% (\$ __)
		10% (\$ __)

	10% (\$ __)
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[or]

3.4 Term [if applicable]

The Services will be provided from the Effective Date through [term date] (the “Term”).

[or]

The initial term of this SOW will start on the Effective Date and end [#] months thereafter (the “Initial Term”). The Governmental Entity shall have the option to extend/renew this SOW for up to X additional X-[month or year] renewal terms; provided that any such extensions/renewals shall not extend beyond the total term of the Agreement or US Communities Contract, including any and all extensions/renewals thereto. The decision to extend this SOW shall be at the sole option of Governmental Entity and may be exercised by Governmental Entity by providing written notice to Insight.

4 PRICING/INVOICING

[CHOOSE ONE OF THE FOLLOWING AND DELETE OTHERS]

4.1 Fixed Fee

As consideration to Insight for performance or provisioning of the Deliverables, Governmental Entity shall pay Insight the following fixed fee, in arrears:

[Service Category Pricing Discount Structure – Choose the appropriate line below and delete the others – be sure to remove the first line, which is an example row. Also, if the Maximum Contract Price is the same as the Actual Fixed Fee, remove the Maximum Contract Price column.]

Services Category	Insight List Price	Minimum Contract Discount	Maximum Contract Price	Actual Fixed Fee
EXAMPLE – REMOVE: Consulting Services	\$35,000.00	15%	\$29,750.00	\$29,000.00
Consulting Services	[\$#]	15%	[\$#]	[\$#]
Deployment Services	[\$#]	15%	[\$#]	[\$#]
Out-sourced Programs	[\$#]	15%	[\$#]	[\$#]
Maintenance Services	[\$#]	10%	[\$#]	[\$#]
Other Services	[\$#]	1%	[\$#]	[\$#]
Total Fixed Fee				[\$#]

The total amount paid to Insight will not exceed the total fixed fee without the prior written approval of Governmental Entity.

[Use this if they will not pay expenses] Governmental Entity will not reimburse Insight for travel expenses, if any are required.

[include the following for Milestone pricing/billing – do NOT need to list discount in this table since it’s listed above.]

The fixed fee is based on the following milestones. Failure of Insight to meet the deadlines/timelines listed in the “**Estimated Timeframe**” column of the corresponding table, above, shall result in Insight being liable to the Governmental Entity for the amount specified in the “**Performance Standards**” column of the table below.

Project Milestone/Description	Price	Performance Standards

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[delete if no tool fees]

Governmental Entity will be invoiced for a one-time, single-use usage fee listed in the table below.

[use this table if we marked up the tool fee – use the same % discount applied to services/deliverables above. Remember to remove example line. Also, if the Maximum Contract Price is the same as the Actual Price, remove the Maximum Contract Price column.]

Tool Description	Insight List Price	Minimum Contract Discount	Maximum Contract Price	Actual Price
EXAMPLE - REMOVE: [Tool Name]	\$600.00	15%	\$510.00	\$500.00
Tool Name	[\$#]	[%]	[\$#]	[\$#]
Total Cost				[\$#]

[use this table if we are providing the tool at our cost]

Tool Description	Fee
Tool Name	[\$#]
Total Cost	[\$#]

NOTE: Tool(s) is being provided to Governmental Entity at Insight’s cost.

Notwithstanding the foregoing or anything else in this SOW to the contrary, the above fixed price shall not exceed the total cost the Governmental Entity would incur were it billed at per unit or time and materials prices.

*The terms and conditions of the U.S. Communities Contract #4400006644 (RFP2000001701) do not apply.

[or]

4.2 Monthly Fixed Fee

As consideration to Insight for performance of the Services, Governmental Entity shall pay Insight the following monthly fixed fee, in arrears.

[Service Category Pricing Discount Structure – Choose the appropriate line below and delete the others – be sure to remove the first line, which is an example row. Also, if the Maximum Contract Price is the same as the Actual Monthly Fixed Fee, remove the Maximum Contract Price column.]

Services Category	Insight List Monthly Fixed Fee	Minimum Contract Discount	Maximum Contract Monthly Fixed Fee	Actual Monthly Fixed Fee	Number of Months	Total Fee
EXAMPLE – REMOVE: Consulting Services	\$35,000.00	15%	\$29,750.00	\$29,000.00	6	\$174,000.00
Consulting Services	[\$#]	15%	[\$#]	[\$#]	[#]	[\$#]
Deployment Services	[\$#]	15%	[\$#]	[\$#]	[#]	[\$#]
Out-sourced Programs	[\$#]	15%	[\$#]	[\$#]	[#]	[\$#]
Maintenance Services	[\$#]	10%	[\$#]	[\$#]	[#]	[\$#]
Other Services	[\$#]	1%	[\$#]	[\$#]	[#]	[\$#]

Total Fee						[\$#]
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The total amount paid to Insight will not exceed the total fee without the prior written approval of Governmental Entity.

[Use this if they will not pay expenses] Governmental Entity will not reimburse Insight for travel expenses, if any are required.

[include the following for Milestone pricing/billing – do NOT need to list discount in this table since it’s listed above.]

The monthly fixed fee is based on the following milestones. Failure of Insight to meet the deadlines/timelines listed in the “**Estimated Timeframe**” column of the corresponding table, above, shall result in Insight being liable to the Governmental Entity for the amount specified in the “**Performance Standards**” column of the table below.

Project Milestone/Description	Price	Performance Standards

[delete if no tool fees]

Governmental Entity will be invoiced for a one-time, single-use usage fee listed in the table below.

[use this table if we marked up the tool fee – use the same % discount applied to services/deliverables above. Remember to remove example line. Also, if the Maximum Contract Price is the same as the Actual Price, remove the Maximum Contract Price column.]

Tool Description	Insight List Price	Minimum Contract Discount	Maximum Contract Price	Actual Price
EXAMPLE - REMOVE: [Tool Name]	\$600	15%	\$510	\$500
Tool Name	[\$#]	[#]%	[\$#]	[\$#]
Total Cost				[\$#]

[use this table if we are providing the tool at our cost]

Tool Description	Fee
Tool Name	[\$#]
Total Cost	[\$#]

NOTE: Tool(s) is being provided to Governmental Entity at Insight’s cost.

Notwithstanding the foregoing or anything else in this SOW to the contrary, the above fixed price shall not exceed the total cost the Governmental Entity would incur were it billed at per unit or time and materials prices.

*The terms and conditions of the U.S. Communities Contract #4400006644 (RFP2000001701) do not apply.

[or]

4.3 Time and Materials Pricing

[use this section (with daily minimum) as the default language for all T&M SOWs, and include daily minimum in Pricing Notes below]

This engagement will be billed on a time and materials basis. Costs incurred by Governmental Entity will be based on the daily minimum listed in the Pricing Notes below or actual time worked, whichever is greater.

[Use this if they will not pay expenses] Governmental Entity will not reimburse Insight for travel expenses, if any are required.

[or use this section if not including the daily minimum in Pricing Notes below (exception – only if requested)]

This engagement will be billed on a time and materials basis. Costs incurred by Governmental Entity will be based on the actual time worked.

[Use this if they will not pay expenses] Governmental Entity will not reimburse Insight for travel expenses, if any are required.

[use this section for all T&M] Charges will be calculated based on the following rates. **[Note: Use the following optional language if Governmental Entity requests retained amounts (which are not to exceed 15%) Services/Finance Approval is required for any SOW which requires Retained Amounts] [Optional]** If agreed to by the Parties, to secure Insight’s performance under this Agreement, a Governmental Entity may retain the amount specified the table below in the (“**Retained Amounts**”) (up to fifteen percent (15%)) column until any performance deficiencies experienced during the applicable billing cycle have been remediated, or until any agreed-upon/defined Deliverables have been fully performed or delivered and the applicable Governmental Entity’s delivery of written notice of Final Acceptance has been tendered.**[optional]**

[update table below – be sure to remove the first line, which is an example row. The total estimated hours and price can be updated by right clicking on number and choosing “update field”. Also, if the Maximum Contract Price (Hourly Rate) is the same as the Actual Price (Hourly Rate), remove the Maximum Contract Price (Hourly Rate) column.]

NOTE: Be careful to check the discount percent for each tier/labor category listed – they are not all the same.]

Resource Type	Tier/Labor Category	Insight List Price (Hourly Rate)	Minimum Contract Discount	Maximum Contract Price (Hourly Rate)	Actual Price (Hourly Rate)	Estimated Hours	Extended Price	[Optional] Retained Amounts
EXAMPLE - REMOVE: Architect Sr.	Tier 2 – Labor Category N	\$270.00	15%	\$229.50	\$210.00	23	\$4,830.00	10% (\$___)
	Tier [#] – Labor Category [letter]	\$[#]	[#]%	\$[#]	\$[#]	[#]	\$[#]	10% (\$___)
	Tier [#] – Labor Category [letter]	\$[#]	[#]%	\$[#]	\$[#]	[#]	\$[#]	10% (\$___)
Total Estimated Amounts						0	\$ 0.00	

Note: With the exception of the hourly rate, the table above provides budgetary estimates only.

[use if this is a Fixed Price, Not-to-Exceed SOW]

[delete if no tool fees]

Governmental Entity will be invoiced for a one-time, single-use usage fee listed in the table below.

[use this table if we marked up the tool fee – use the same % discount applied to services above. Remember to remove example line. Also, if the Maximum Contract Price is the same as the Actual Price, remove the Maximum Contract Price column.]

Tool Description	Insight List Price	Minimum Contract Discount	Maximum Contract Price	Actual Price
EXAMPLE - REMOVE: [Tool Name]	\$600.00	15%	\$510.00	\$500.00
[Tool Name]	\$[#]	[#]%	\$[#]	\$[#]
Total Cost				\$[#]

[use this table if we are providing the tool at our cost]

Tool Description	Fee
Tool Name	\$[#]
Total Cost	\$[#]

NOTE: Tool(s) is being provided to Governmental Entity at Insight’s cost. *The terms and conditions of the U.S. Communities Contract #4400006644 (RFP2000001701) do not apply.

[use if this is a Fixed Price, Not to Exceed SOW]

[or]

4.4 Per-Unit Pricing

As consideration to Insight for performance of Services or provisioning of the Deliverables, Governmental Entity shall pay Insight the price per unit as indicated below.

[update table below – use the same % discount applied to services/deliverables above. Remember to remove example line. Also, if the Maximum Contract Price (Per Unit) is the same as the Actual Price Per Unit, remove the Maximum Contract Price (Per Unit) column]

Unit Type	Insight List Price (Per Unit)	Minimum Contract Discount	Maximum Contract Price (Per Unit)	Actual Price Per Unit	Estimated Qty.	Extended Price
EXAMPLE - REMOVE: Site	\$2,000.00	15%	\$1,700.00	\$1,600.00	5 sites	\$8,000.00
						\$[#]
						\$[#]
Total Estimated Amounts					0	\$ 0

Note: With the exception of the price per unit, the table above provides budgetary estimates only.

[delete if no tool fees]

Governmental Entity will be invoiced for a one-time, single-use usage fee listed in the table below.

[use this table if we marked up the tool fee – use the same % discount applied to services/deliverables above. Remember to remove example line. Also, if the Maximum Contract Price is the same as the Actual Price, remove the Maximum Contract Price column.]

Tool Description	Insight List Price	Minimum Contract Discount	Maximum Contract Price	Actual Price
EXAMPLE - REMOVE: [Tool Name]	\$600.00	15%	\$510.00	\$500.00
[Tool Name]	\$[#]	[#]%	\$[#]	\$[#]
Total Cost				\$[#]

[use this table if we are providing the tool at our cost]

Tool Description	Fee
Tool Name	\$[#]
Total Cost	\$[#]

NOTE: Tool(s) is being provided to Governmental Entity at Insight’s cost.

*The terms and conditions of the U.S. Communities Contract #4400006644 (RFP2000001701) do not apply.

[Use this if they will not pay expenses] Governmental Entity will not reimburse Insight for travel expenses, if any are required.

4.5 Pricing Notes

- For purposes of offer and acceptance, pricing presented in this SOW is valid for 30 days from the date set forth in the header of this SOW. Upon execution, pricing shall be as agreed to by the Parties as set forth in the final executed SOW.
- Pricing and estimated time to complete this engagement are based upon Governmental Entity providing necessary access to internal experts, location(s), all critical systems, applications, and hardware required to complete the project.
- If an Insight engineer arrives on site per an agreed-upon schedule and is unable to start or complete the project due to any Governmental Entity, site, and/or equipment issues, a fee equal to time expended will be incurred. Insight will have 10 business days to schedule the return visit, if required.
- [only include if this SOW is for Microsoft/Office Productivity services.] Insight has a support agreement with Microsoft Premier. Charges for any support issues that require escalated support to Microsoft Premiere will be passed to Governmental Entity at the rate of \$250 dollars per hour.
- This SOW assumes Services will be performed over a consecutive timeframe unless otherwise provided herein.
- Insight is not responsible for delays or repeated tasks caused by factors outside Insight’s control. These factors include, but are not limited to, availability of Governmental Entity personnel, equipment, and facilities.
- In order for Insight to accept Purchase Orders against this contract, Governmental Entity must be registered with the U.S. Communities Government Purchasing Alliance. Registration can be completed by going to www.uscommunities.org or any successor website thereto (Vendor anticipates a subsequent domain change to: <https://omniacconnect.omniapartners.com/>).

4.6 Invoicing

[CHOOSE ONE OF THE FOLLOWING AND DELETE OTHERS]

For T&M with daily minimum: <<Governmental Entities should carefully scrutinize this Section before agreement if included in a proposed SOW>>

[use this option (with daily minimum) as the default language for all T&M SOWs]

[Use this if they will not pay expenses] Insight will invoice Governmental Entity on a monthly basis, in arrears, for the minimum hours worked or actual hours worked.

[or]

For T&M without daily minimum:

[Use this if they will not pay expenses] Insight will invoice Governmental Entity on a monthly basis, in arrears, for the actual hours worked.

[or]

For Fixed Fee Projects:

[Use this if they will not pay expenses] Insight will invoice Governmental Entity monthly, in arrears, for Services performed based upon a percentage complete.

[or]

For Monthly Fixed Fee Projects:

[Use this if they will not pay expenses] Insight will invoice Governmental Entity monthly, in arrears, for the Monthly Fixed Fee.

[or]

For Milestone Projects (including phases):

[Use this if they will not pay expenses] Upon the occurrence of each milestone, Insight will invoice Governmental Entity for Services rendered or Deliverables provisioned through the date of the milestone.

[or]

For Flat Fee Programs (monthly):

[Use this if they will not pay expenses] Insight will invoice Governmental Entity a flat fee of \$XXX.00 on a monthly basis, in arrears, for a X-year term.

[or]

OR, for Per-Unit Pricing:

[Use this if there is a set-up fee and they will not pay expenses] Insight will invoice Governmental Entity a set-up fee of \$XXX.00 following completion and Acceptance of any required setup, and subsequently, on a monthly basis, in arrears, for units deployed.

[Use this if there is no set-up fee and they will not pay expenses] Insight will invoice Governmental Entity on a monthly basis, in arrears, for the actual units deployed.

5 SPECIAL TERMS, CONDITIONS AND ASSUMPTIONS

5.1 Order of Precedence

Where the terms and conditions of this SOW conflict with the terms and conditions of the State of Iowa , Technology Products, Services, and Solutions Master Agreement, Contract No. 2018 BUS 0105, the terms and conditions of Contract No. 2018 BUS 0105 shall prevail.

5.2 Project Kickoff

A project kickoff meeting will be held to review project expectations, discuss IT infrastructure design, discover any possible problems/risks, and formulate an appropriate plan (including a firm engagement schedule and downtimes).

5.3 Business Hours

Work will be performed during normal business hours unless otherwise mutually agreed upon. Normal business hours are defined as an 8-hour day, Monday through Friday, excluding designated Insight Holidays. [delete the following unless we will charge overtime, weekend, and/or holiday rates:] Notwithstanding anything in this SOW to the contrary, any work performed outside of these normal business hours will be billed at \$ [] above the hourly rate listed in Pricing/Invoicing section above.

5.4 Project-Specific Assumptions

1. The estimated duration and associated fees presented in this SOW are based on the following assumptions. Should any element(s) of these be lacking during execution of the Services or provisioning of the Deliverables, additional time, associated fees, and expenses may be required.
2. [add any other project-specific assumptions here]
3. Insight will provide an inventory spreadsheet of product and material pre- and post-installation that will be submitted as part of the Deliverables (if specified in the Deliverables section). However, Insight is NOT responsible for Governmental Entity-owned product and material during any phase of the project/program.
4. If applicable, any onsite skills transfer that takes place during this project will not replace the manufacturer's formal system implementation and administration classes.
5. Insight has no obligation to mount, affix, or otherwise fasten any cable, hardware, or other product to any building or structure (inside or outside), and Insight has no obligation to run cable above, under, behind, or through any ceiling, floor, or wall of any building or structure. If such Services are requested by Governmental Entity, such Services may be performed by Insight only to the extent permitted by applicable law and will be subject to a change request for additional Services.
6. Each party agrees that personnel will not be asked to perform, nor volunteer to perform, engineering and/or consulting tasks that lie outside the skill sets and experience of personnel. Personnel have the right to decline a service request if the request falls outside their scope of experience and expertise.
7. This engagement does not include:
 - a. [add any other exclusions here]
 - b. Electrical or cabling Services
 - c. Formal user training

5.5 Constraints

Work that is not included in the Scope section is considered to be out of scope. Any out of scope work must be verified and pre-authorized by Insight prior to commencement through the Change Order process.

5.6 Case Study

Upon successful completion of the engagement, Insight may ask Governmental Entity to serve as an account case study for Insight. If Governmental Entity agrees, in writing, Insight will prepare a marketing release for publication of non-confidential aspects of the Project (to be reviewed in advance by Governmental Entity), in conjunction with Governmental Entity's name.

The following section must be completed before this SOW can be processed:

Invoicing Procedures:

1. Method (Governmental Entity to select one option below):

- Mail Invoice** - Hard copy invoice will be mailed to:

Company Full Name: _____

Address: _____

Attention: Accounts Payable or: _____

Accounts Payable Contact: _____

Phone: _____

- Email Invoice** - Invoice copy will be sent electronically via e-mail to:

2. PO Process (Governmental Entity to select one option below):

- Governmental Entity issues system-generated POs or internal reference numbers for service engagements.

Please fill in the PO Number below and attach a hard copy of the PO to this signed SOW.

Note: Services cannot be performed until a hard copy of the PO is received, or Billing Reference is provided.

PO Number: _____

PO Release Number (if applicable): _____

Internal Billing Reference Number/Name: _____

- Governmental Entity does NOT issue system-generated PO for service engagements.

Accordingly, performance of and payment for any Services under this SOW do not require, and are not contingent upon, the issuance of any PO or other similar document.

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute this Purchasing Instrument, which is effective as of the date of last signature, below.

[Name]
(“Governmental Entity”)

Insight Public Sector, Inc.
(“Vendor”)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment 1

CHANGE ORDER REQUEST FORM -- SAMPLE			
CHANGE ORDER # [INSERT CHANGE ORDER #]			
Governmental Entity		Original Project Name	
Insight Services Manager		Original Purchasing Instrument SOW #:	
Insight Services Manager		Governmental Entity Project Sponsor	
		Request Date	
Purchase Instrument/Order to Apply to Changes: PO # _____			
<u>Change Request Summary</u>			
Original Scope Task			
Reason for Change			
Description of Change			
Project Schedule			
Project Pricing			
Deliverables			
<u>Signatures</u>			
Insight Authorized Signer:		Date:	
Print Name:		Title:	
Governmental Entity Authorized Signer:		Date:	
Print Name:		Title:	