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

Title of Contract: State of Iowa, acting by and through the Office of the Chief Information Officer (**"OCIO"**) and DLT Solutions, a limited liability company organized under the laws of Virginia (**"Vendor"**), incorporating, and amending Contract Number: 4400006643 for Amazon Web Services Products, Services, and Solutions and associated Amazon Products and Services pursuant to Request for Proposal 2000001701, Technology Products, Services, Solutions & Related Products and Services (**"RFP"**) issued and awarded by and through Fairfax County, Virginia (Agency) via the OMNIA Partners, formerly known as the U.S. Communities Government Purchasing Alliance (**"OMNIA Contract"**), *available at* http://www.uscommunities.org/suppliers/dlt-solutions-amazon-web-services/.	**Contract Number:** 2019 BUS 0610

State Agency's Name: Iowa Office of Chief Information Officer (**"OCIO"**)

Vendor's Name: DLT Solutions, LLC. (**"Vendor"**)

Contract to Begin/Effective Date: The date of the last signature on the signature block below.	**Date of Expiration:** April 30, 2021	**Annual Extensions:** Up to Seven (7) Annual One Year Renewals or co-terminus with the term of the OMNIA Contract, whichever is shorter

Documents Incorporated/Order of Precedence. This Umbrella Agreement, the OMNIA Contract (including but not limited to the RFP and Vendor's Proposal thereto), and any and all attachments to this Umbrella Agreement, which are incorporated by reference as if fully set forth herein, together comprise the terms and conditions governing the relationship between the Parties (all collectively referred to herein as the **"Agreement"**). In the case of any conflict or inconsistency between the specific provisions of this Umbrella Agreement, the OMNIA Contract (including but not limited to the RFP and Vendor's Proposal thereto), and any attachments to this Umbrella Agreement, such conflict or inconsistency shall be resolved in the following order:

1. First by giving preference to any Special Terms and Conditions labeled as **"Ancillary Agreements"** or otherwise addressing compliance concerns of individual Governmental Entities making purchases hereunder;

2. Second by giving preference to the specific provisions of this Umbrella Agreement;
3. Third by giving preference to any other Special Terms and Conditions attached hereto; and
4. Fourth by giving preference to the specific provisions of the OMNIA Contract (including but not limited to the RFP and Vendor's Proposal in response thereto); and
5. Fifth by giving preference to the specific provisions of any Purchasing Instruments (Purchase Order(s)/Statement(s) of Work/Requisitions) executed hereunder.

Notes:

- This Agreement does not guarantee any minimum level of purchases, usage, or compensation;
- This Agreement is available to any Governmental Entity, including State Agencies and political subdivisions, in the State of Iowa;
- Absent a separate, lawful procurement basis justifying the purchase, only the Deliverables available under the OMNIA Contract are available under this Agreement;
- 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 DLT Solutions OMNIA Contract No. 4400006643 via this Agreement. Pricing identified in the OMNIA Contract No. 4400006643 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, Software, Services, Equipment, or Hardware provided hereunder.
- Governmental Entities making purchases hereunder should understand that certain Deliverables, Software, Services, Software, Equipment, or Hardware that Vendor supplies hereunder, directly or indirectly, may require the Governmental Entity to execute or otherwise agree to Amazon's standard contract documents or terms and conditions governing a Governmental Entity's access to, use of, or deployment of such Deliverables, Services, Software, Equipment, or Hardware, *available at* https://aws.amazon.com/service-terms/ & https://aws.amazon.com/agreement/ & https://aws.amazon.com/legal/service-level-agreements/ & https://aws.amazon.com/aup/. 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.

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: DLT Solutions, LLC.

By ***(Authorized Signature)***

Date Signed 6/24/19

Printed Name and Title of Person Signing
DENNY CLIMO, VICE PRESIDENT

Address
DLT SOLUTIONS
2411 Dulles Corner Park, Suite 800
Herndon, VA 20171

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

By ***(Authorized Signature)***

Date Signed 7/23/19

Printed Name and Title of Person Signing
Jeff Franklin, Interim 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 and DLT Solutions Amazon Web Services Products, Services, and Solutions Purchasing Umbrella Services Agreement

This Agreement for Amazon Web Services Products, Services, and Solutions and associated Amazon Products and Services 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 DLT Solutions, a limited liability company organized under the laws of Virginia (**"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 terms and conditions pursuant to which Governmental Entities in the State of Iowa may procure Amazon Web Services Products, Services, and Solutions and associated Amazon Products and Services by leveraging Contract Number: 4400006643 for Amazon Web Services Products, Services, and Solutions and associated Amazon Products and Services pursuant to Request for Proposal 2000001701, Technology Products, Services, Solutions & Related Products and Services (**"RFP"**) issued and awarded and through Fairfax County, Virginia, and the U.S. Communities Government Purchasing Alliance (**"OMNIA Contract"**), *available at* http://www.uscommunities.org/suppliers/dlt-solutions-amazon-web-services/. OCIO has concluded this is in the best interests of the State of Iowa because the OMNIA 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 OMNIA Contract saves the State time and money associated with conducting a separate, duplicative competitive process.

1.2. Authority. Iowa Code section 8B.24(5)(*c*) (2017) authorizes OCIO, on its own behalf or on the behalf of another participating agency or governmental entity, to procure information technology under or by leveraging an existing competitively procured contract entered into by another governmental entity. In the alternative, Iowa Code section 8B.24(5)(*a*), "the office may 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." Pursuant to this authority, OCIO hereby authorizes Participating Agencies and other Governmental Entities in the State of Iowa to procure the Deliverables available from Vendor pursuant to the OMNIA Contract in accordance with the terms and conditions of this Agreement.

1.3. Term.

1.3.1. The initial term of this Agreement shall be as stated on the CD&E, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, OCIO shall have the option to extend/renew this Agreement for up to seven(7) additional one-year renewal terms. 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. Notwithstanding the foregoing, or anything else in this Agreement to the contrary, unless there exists a separate, lawful procurement basis, this Agreement shall be co-terminus with the OMNIA Contract and any extensions/renewals thereto, which at the time of the execution of this Agreement is expected not to exceed April 30, 2019, and/or April 30, 2023, if Fairfax County Virginia exercises all optional one-year extension/renewals available to it.

1.3.2. Notwithstanding the foregoing, or anything else in this Agreement to the contrary, any software, program, infrastructure, platform, or other licenses, including any subscription licenses, shall continue beyond any expiration or termination of this Agreement in accordance with and pursuant to the underlying license term and the terms and conditions of this Agreement, unless such license is terminated for cause, and solely to the extent such license is paid for in accordance with the terms of this Agreement.

1.4. Relationship between this Agreement and OMNIA Contract. The OMNIA 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 purchasing under the OMNIA 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 OMNIA 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 OMNIA Contract, such conflict or inconsistency shall be resolved as stated on the CD&E.

1.5. 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.

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

2.1. **"Acceptance"** means the applicable Governmental Entity has determined a portion of Deliverables provided under a Purchasing Instrument satisfy the Governmental Entity's

Acceptance Tests. **"Final Acceptance"** means the applicable Governmental Entity has determined all Deliverables provided under a Purchasing Instrument satisfy the Governmental Entity's Acceptance Tests. **"Non-acceptance"** means the applicable Governmental Entity has determined that a portion of Deliverables provided under a Purchasing Instrument have not satisfied the Governmental Entity's Acceptance Tests.

2.2. **"Acceptance Criteria"** means the specifications, goals, performance measures 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 any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, 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 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), including the OMNIA Contract, the RFP, and the Proposal.

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 the System or any Deliverables provided or developed hereunder.

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 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 making purchases hereunder.

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 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. **"Deliverables"** means all of the goods, Services, Software, work, work product, items, materials, and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or otherwise made available through, Vendor, Vendor Contractors, or Vendor Personnel, directly or indirectly, in connection with this Agreement.

2.11. **"Documentation"** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials 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.

2.12. **"End User License Agreement(s)"** or **"EULA(s)" or "Terms of Service" or "TOS"** means Vendor or Vendor Contractor's standard contract documents governing a Governmental Entity's access to or use of certain Services Vendor supplies hereunder, directly or indirectly, and that a Governmental Entity may be required to execute in connection with its use of the same. Notwithstanding anything in the Agreement or any related agreement to the contrary, any EULA or TOS is subject to negotiation. Amazon End User License Agreement(s) or EULA(s) or Terms of Service or TOS are *available at* https://aws.amazon.com/service-terms/ ; https://aws.amazon.com/agreement/

https://aws.amazon.com/legal/service-level-agreements/ ; https://aws.amazon.com/aup/

2.13. **"Governmental Entity"** shall mean any Governmental Entity or Governmental Subdivision, as defined in Iowa Code Section 8A.101, or any successor provision to that section. In addition to the foregoing, the term Governmental Entity includes for purposes of this Agreement Participating Agencies, agencies, independent agencies, the Legislative Branch, 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, including counties, cities, school districts, or any combination of any of the foregoing of the State of Iowa.

2.14. **"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.

2.15. **"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.

2.16. **"Proposal"** or **"Vendor's Proposal"** means Vendor's Response to the RFP.

2.17. **"Purchasing Instrument"** means documentation issued by a Governmental Entity to Vendor for the purchase of Deliverables under this Agreement, including a **"Purchase Order"** or **"Statement of Work"** executed hereunder or other like documentation, regardless of form, which identifies the Deliverables to be purchased and any other requirements deemed necessary by the applicable Governmental Entity, such as compensation and delivery dates.

2.18. **"Request for Proposal"** or **"RFP"** means request for proposal 2000001701 for Technology Products, Services, Solutions & Related Products and Services issued and awarded by and through Fairfax County, Virginia, and the U.S. Communities Government Purchasing Alliance *available at* http://www.uscommunities.org/suppliers/dlt-solutions-amazon-web-services/.

2.19. **"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.

2.20. "**Services**" means professional services, managed services, or consulting work, including the implementation and/or support of Amazon Web Services products, and/or solutions, and any associated Amazon products available pursuant to the OMNIA Contract forming the basis of this Agreement.

2.21. **"Special Terms and Conditions"** means any attachment hereto entitled, in whole or in part, **"Special Terms and Conditions."**

2.22. **"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.

2.23. **"Vendor Contractor(s)"** means any of Vendors authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Vendor, directly or indirectly, in performing or providing Deliverables under this Agreement.

2.24. **"Vendor Personnel"** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Vendor or any Vendor Contractor performing or providing Deliverables under this Agreement.

3. **Deliverables.** Vendor, Vendor Contractors, and Vendor Personnel shall commence, complete, and deliver all work and provide all Deliverables available under the OMNIA Contract 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 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 hereto, performance standards, monitoring, and review provisions applicable to specific projects are as set forth in the applicable Purchasing Instrument.

3.1. Related Deliverables. Vendor shall identify and recommend to the applicable Governmental Entity all related Deliverables, whether originating with Vendor, Vendor Contractors, or Third Parties, necessary or desirable to be acquired for the effective use of any Deliverables provided hereunder.

3.2. Deliverables provided by Third Parties through Vendor. 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 related Deliverables provided by or through a Third Party hereunder. At a minimum, Vendor shall assign to the applicable Governmental Entity all of licensor's and manufacturer's warranties, indemnities, or other associated benefits pertaining to such related Deliverables.

3.2.1. *Equipment or hardware.* Any equipment or hardware provided hereunder will be new and unused; Title to such equipment or hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions; 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 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.

3.2.2. *Software*. Vendor shall ensure that all software, programs, or the like provided hereunder, regardless of whether such software, programs, or the like are incorporated into or embedded within any Services 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.

3.3. Amendments to Purchasing Instruments. A Purchasing Instrument may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of Vendor and the applicable Governmental Entity.

3.4. 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:

3.4.1. Written Request. The Governmental Entity shall specify in writing the desired modifications to the Purchasing Instrument with the same degree of specificity as in the original Purchasing Instrument.

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

3.4.3. Effect of Change Order. Both Parties must sign and date the change order to authorize the change in Deliverables described therein and incorporate the changes into the applicable Purchasing Instrument and this Agreement. No Deliverables shall be provided pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both Parties. 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.

3.5. Minimum Documentation Requirements. In addition to any other documentation requirements required by the OMNIA Contract, Purchasing Instruments must clearly state **"This Purchasing Instrument is issued under OCIO Contract # 2019 BUS 0610."**

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

4.1. Pricing/Compensation. In consideration of Vendor providing Governmental Entities Deliverables under this Agreement, Vendor shall be entitled to receive the fees in accordance with the terms and conditions of the OMNIA Contract and Vendor's Proposal, subject to all terms and conditions of this Agreement, including Sections 4.2 (No Additional Fees), 4.3 (Satisfactory Deliverables), 4.4 (Effect of Purchasing Instruments), 4.5 (Payment does not Imply Acceptance), and 4.6 (Invoices).

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), in whole or in part, provided under this Agreement or any Purchasing Instrument(s) if the applicable Governmental Entity reasonably determines that such Deliverable(s) has not been satisfactorily or completely delivered or performed, or that such Deliverable(s) fails to meet or conform to any applicable Acceptance Criteria.

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 Purshing 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 that do not comply with applicable Acceptance Criteria or that are otherwise incomplete, 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. 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. Notwithstanding the foregoing, to the extent applicable, a Governmental Entity, in its sole discretion, may elect to prepay fees for Deliverables in accordance with applicable laws, rules, policies, and procedures, including State of Iowa Accounting Policies and Procedures, *available at*: https://das.iowa.gov/state-accounting/sae-policies-procedures-manual.

4.7. Reserved. [This section left intentionally blank]

4.8. Erroneous Payments and Credits. Vendor shall promptly pay or refund to the applicable Governmental Entity the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Vendor or notification by the applicable Governmental Entity of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the applicable Governmental Entity under this Section, the applicable Governmental Entity may charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date payment or refund is due, or the maximum amount otherwise allowed by law, whichever is greater. The applicable Governmental Entity may, in its sole discretion, elect to have Vendor apply any amounts due and owing the Governmental Entity under this Section against any amounts payable by the applicable Governmental Entity under this Agreement.

4.9. Set-off Against Sums Owed by Vendor. In the event Vendor owes a Governmental Entity any sum under the terms of this 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.

4.10. Withholding Payments. In addition to pursuing any other remedy provided herein or available at law, equity, or otherwise, 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.

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

4.11. Correction/Cure. A Governmental Entity may correct any deficiencies with respect to any Deliverable(s) as it relates to any failure to comply with applicable Acceptance Criteria without prejudice to any other remedy it may have if Vendor fails to correct such deficiency as otherwise required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the Governmental Entity. A Governmental Entity may procure the Deliverable(s) reasonably necessary to correct any such deficiency or cure any Vendor

default, in which event Vendor shall reimburse the Governmental Entity for the actual costs incurred by the Governmental Entity for such Deliverable(s) or cure, including the reasonable value of the time expended by the Governmental Entity's personnel to secure substitute Deliverable(s) or cure such default. In addition, Vendor shall cooperate with the Governmental Entity or any Third Parties retained by the Governmental Entity which assist in curing such deficiencies/default, including by allowing access to any pertinent materials or work product of Vendor's.

4.12. Error Correction. With respect to each notice from an applicable Governmental Entity to Vendor during the term of this Agreement that notifies Vendor that any Deliverable(s) provided by Vendor, including those previously accepted by the applicable Governmental Entity, fails to comply with applicable Acceptance Criteria, 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).

4.13. Administrative Fees. Without affecting the prices/rates Vendor is authorized to charge Governmental Entities hereunder, Vendor shall provide to OCIO a one percent (1.00%) administrative fee on all sales made against this Agreement. This one percent (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:

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

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

5.1. Acceptance Testing. Implementation and/or professional service based Deliverables shall be subject to the applicable Governmental Entity's Acceptance Testing and Acceptance which will be provided to Vendor for review and 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 so the Governmental Entity may re-conduct its Acceptance Tests with respect to such Deliverable(s). In the event the Governmental Entity determines after re-conducting its Acceptance Tests with respect to any Deliverable(s) that Vendor has attempted to correct or repair pursuant to this Section that such Deliverable fails to satisfy its Acceptance Tests, then the Governmental Entity shall have the continuing right, at its sole option, to:

5.1.1. Require Vendor to correct and repair such Deliverable(s) within such period of time as the Governmental Entity may specify in a written notice to Vendor;

5.1.2. Refuse to accept such Deliverable(s) without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such Deliverable(s), or receive a refund of any fees or amounts already paid with respect to such Deliverable(s);

5.1.3. Accept such Deliverable(s) on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Governmental Entity's satisfaction, the deficiencies present therein and any reduced value or functionality of such Deliverable(s) or the costs likely to be incurred by the Governmental Entity to correct such deficiencies; or

5.1.4. Terminate the applicable Purchasing Instrument and/or seek any and all available remedies, including direct damages..

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 in accordance with the applicable Acceptance Criteria, to the Governmental Entity's sole satisfaction and the Governmental Entity has provided Vendor with written notice of Final Acceptance. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Governmental Entity's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any deficiency is later discovered with respect to such Deliverable(s). In addition, Vendor's receipt of any notice of Acceptance with respect to any Deliverable(s) shall not be construed as a waiver by the Governmental Entity of its right to refuse to provide notice of Final Acceptance.

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

5.2.1. *Vendor or Project Manager.* At the time of execution of a Purchasing Instrument, Vendor shall designate, in writing, a Project Manager acceptable to the applicable Governmental Entity to serve until Final Acceptance is given by the Governmental Entity. Vendor will assign a Project Manager of a management level sufficient to ensure timely responses from all Vendor Personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the applicable Governmental Entity prior to his or her appointment as Vendor's Project Manager. Vendor represents and warrants that its Project Manager will be fully qualified to perform the tasks required of that position under the applicable Purchasing Instrument. Vendor's Project Manager shall be able to make binding decisions of a technical nature, for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Governmental Entity's site as needed during the course of work under the applicable Purchasing Instrument and will be available either in person, by telephone, or email to respond promptly during the business day to inquiries from the applicable Governmental Entity.

5.2.2. *Review Meetings.* Beginning upon the execution of a Purchasing Instrument, Vendor's Project Manager shall meet weekly with the Governmental Entity's project manager and representatives, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor or performance issues. At each review meeting, Vendor's Project Manager shall provide a status report, which shall include, at minimum, the information described in Section 5.2.3 and describe any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any Party has identified a problem in writing, Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any Party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance under this Agreement.

5.2.3. *Reports.* Vendor shall provide the applicable Governmental Entity with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Governmental Entity may request. Vendor's proposed format and level of detail for its status reports shall be subject to the applicable Governmental Entity's approval.

5.2.4. *Problem Reporting Omissions.* A Governmental Entity's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that the Governmental Entity may have. A Governmental Entity's failure to identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance or constitute Acceptance under this Agreement.

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

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

Period End	**Fee Due**
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. Notwithstanding the foregoing, Vendor may provide the aforementioned reports via access to a web-based application called CloudCheckr, or to any applicable successor application, that will allow self-service access to all reports as otherwise described in this Section 5.3.1.

5.3.2. *Review Meetings.* Vendor and OCIO shall meet virtually or in person quarterly, unless otherwise mutually agreed by the Parties, to discuss progress made by Vendor on Deliverables/projects Vendor is currently providing to/working on with Governmental Entities under this Agreement, and to discuss Vendor's performance generally. At each review meeting, Vendor shall provide a status report, which shall include, at minimum, the information described in Section 5.3.1 and describe any problems or concerns encountered since the last meeting

5.3.3. *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, at law, at equity, or otherwise that OCIO or any other Governmental Entity may have.

5.3.4. *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. Ownership of Vendor-Owned Deliverables. Except as specifically granted in a Purchasing Instrument, EULA, or as otherwise provided in this Agreement, Vendor shall own all Pre-existing Deliverables that were independently and exclusively developed by Vendor prior to the Effective Date of this Agreement (**"Vendor-Owned Deliverables"**).

6.2. License to Vendor-Owned Deliverables. Except as otherwise provided in and subject to this Agreement or EULA, 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 limited license to use, reproduce, modify, distribute copies of, perform, display, host, and prepare derivative works based upon Vendor-Owned Deliverables provided hereunder. The foregoing grant shall be in addition to (and shall not be construed to limit) any rights, licenses, and privileges as may be granted in any license agreement(s) applicable to Vendor-Owned Deliverables. Except as otherwise permitted by this Agreement, 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-Owned Deliverables.

6.3. Ownership and Assignment of Customer-Owned Deliverables. 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, including in a EULA, in the event a Deliverable(s) is, is comprised of, in whole or in part, or is a derivative work based on any intellectual property owned by a Third Party (**"Third Party Intellectual Property"**), use of those third party deliverables or a combination thereof shall be subject to the terms and conditions of the applicable third party's end user license agreement, to the extent not covered by the Vendor's agreement with the government entity.

6.8. Rights of the Federal and State Government. If all or a portion of the funding used to pay for the Deliverables provided hereunder 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 or other intellectual property rights 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, fully paid up, royalty-free, worldwide right and 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 this 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.

7. Representations, Warranties, and Covenants.

7.1. Governmental Entities making purchases hereunder shall be afforded all of the representations and warranties afforded the Lead Public Agency and/or any Agencies making purchasing under the OMNIA Contract, and such representations and warranties shall accrue and apply with equal effect to Governmental Entities making purchases hereunder.

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

7.2.1. 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.

7.2.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.

7.2.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.

7.2.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.

7.2.5. 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.

7.2.6. All applicable I.T. Governance Document(s).

7.2.7. 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 or the Iowa Department of Administrative Services 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.

8. Indemnification.

8.1. **Vendor.** In addition to any indemnifications or other like guarantees afforded the Lead Public Agency and/or any Agencies making purchasing under the OMNIA Contract, and any indemnifications or other like guarantees afforded Governmental Entities under the Agreement, Vendor or Vendor Contractor agree to indemnify and hold harmless Governmental Entities making purchases under the Agreement or their employees, officers, board members, agents, representatives, officials, or other like individuals

("State Indemnitees"), from and against all 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 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 intentional or willful conduct or negligence of Vendor, Vendor Contractor, or any Vendor Personnel;

8.1.2. Any act or omission of Vendor, Vendor Contractor, or any Vendor Personnel;

8.1.3. Any breach of any representation, warranty or covenant of Vendor or Vendor Contractors related to the Agreement, including the OMNIA Contract, the RFP, Vendor's Proposal, or any EULA;

8.1.4. Any defect in any software, program, infrastructure, or platform supplied by Vendor or Vendor Contractors, directly or indirectly;

8.1.5. Any actual or alleged infringement or misappropriation of any third party's intellectual property rights related to any software, program, infrastructure, or platform supplied by Vendor or Vendor Contractors, directly or indirectly. This indemnification provision shall supersede any infringement indemnification provision set forth in any EULA. No indemnification of any State Indemnitees under this provision shall be conditioned on the utilization or deployment of a new release, update, or upgrade of any software, program, infrastructure, or platform supplied by Vendor or Vendor Contractors, directly or indirectly, or purchase or subsequent renewal of any maintenance related to the same. As it relates solely to this indemnification obligation regarding third-party intellectual property, Governmental Entities may, solely to the extent permitted by and in accordance with applicable law, rule, or regulation, be required to: (i) notify Vendor in writing of any claims for which it or any State Indemnitees may subsequently seek reimbursement within a reasonable time; and (ii) afford Vendor the right to participate in an advisory capacity in the defense and settlement of any claims for which it or any State Indemnitees may subsequently seek reimbursement. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to the Governmental Entity against whom the claim has been asserted.

8.1.6. Any acts or omissions of Vendor or Vendor Contractor or their employees, officers, board members, agents, representatives, officials, or other like individuals that cause, in whole or in part, directly or indirectly, a Security Breach or other like failure to maintain confidentiality, integrity, or availability of information as required under the Agreement, and applicable law, rule, or regulation, including but not limited to breach of HIPAA requirements and unauthorized access to, or failure to maintain confidentiality of personally identifiable information. This indemnification obligation is in addition to any other indemnification obligation set forth in this Agreement.

Notwithstanding anything in any EULA to the contrary, any right or obligation of Vendor or Vendor Contractors to defend any State Indemnitees shall be modified/amended solely with an obligation to indemnify and hold harmless State Indemnitees. For the avoidance of doubt, except as otherwise provided herein, Vendor shall have no right to defend any State Indemnitees or be deemed to have been granted settlement authority as it relates to any claims made against any Indemnitees.

8.2. **State of Iowa.** Notwithstanding anything in any EULA 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 defend, indemnify, or hold harmless Vendor or Vendor Contractors for any reason (**"Vendor Indemnitees"**).

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 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, Vendor Contractors, 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, directly or indirectly, 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 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; 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 (Vendor Cooperation/Transition Assistance), 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 or materials, whether tangible or intangible, provided by a Governmental Entity to Vendor or prepared or developed by Vendor for the Governmental Entity hereunder, including Customer Property;

9.6.3. Immediately return to the applicable Governmental Entity any payments made by the Governmental Entity for Deliverables that were not rendered or provided by Vendor;

9.6.4. Immediately deliver to OCIO and the applicable Governmental Entity any and all Deliverables, including Customer-Owned Deliverables, 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. 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 (Termination for Cause by OCIO or Governmental Entities) 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. Otherwise 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 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, 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 OCIO and the Applicable Governmental Entity.

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

10.1.2.1. After providing notice to the applicable Governmental Entity and subject to its prior written approval, return or destroy, at the applicable Governmental Entity's option, 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. Soley the extent Vendor is required to disclose Customer Data to a Third Party, Vendor will furnish only such portion of Customer Data as it is required to disclose and will exercise best efforts to obtain an order or other reliable assurances that Customer Data will be held in confidence by any Third Party to which it is disclosed.

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

10.2. Treatment of Vendor's Confidential Information.

10.2.1. *Safeguarding Obligation.* Except as otherwise provided or contemplated herein, and subject to applicable state, federal, and/or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), Governmental Entities shall not intentionally disclose 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).

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 Indemnitees 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, 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, or theft of Customer Property. Such security measures shall be in accordance with recognized industry standards and controls (including NIST 800-53, Revision 4 and ISO27001:2013), and not less stringent than the measures Vendor, Vendor Contractors, and Vendor Personnel utilize to safeguard 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 any 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 by such Governmental Entity.

11.1.2. All Customer Data shall be encrypted at rest and in transit with controlled access. Unless otherwise expressly provided herein or otherwise agreed to by the Parties in writing, Vendor, Vendor Contractors, and Vendor Personnel are responsible for encryption of Customer Data in their possession. Additionally, Vendor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules for all Customer Data, unless the applicable Governmental Entity approves in writing the storage of Customer Data on a portable device that does not satisfy these standards.

11.1.3. Storage, processing, transmission, retention, or other maintenance of Customer Data at rest and all backups shall occur solely in the continental United States of America. Vendor shall not allow Vendor Personnel to store, process, or retain Customer Data on any portable devices, including personal computers, tablets, or cell phones, except to the extent such devices are used and permanently stored or backed up at all times only in the continental United States of America.

11.2. [This section left intentionally blank]

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. 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. Vendor shall supply the Office with a summary of all background checks conducted under this paragraph upon request by the Office.

11.3.1.2. Additional Screening. Governmental Entities reserve the right to subject Vendor Personnel to additional background checks and standards 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.

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 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 safety or security risk, or other liability risk, and notifies Vendor of such 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 two (2) hours of Vendor's or Vendor Contractor's discovery of any actual or suspected Security Breach. Such report must be given in the most expedient time possible and without

unreasonable delay. Written confirmation must be sent to the 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 Contractors 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 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).

11.5. [This section left intentionally blank]

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. In addition, Vendor shall supply the Office with a summary of all E-Verify checks conducted under this paragraph upon request by the Office.

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 Personnel shall not hold themselves out as an employee or agent of the any Governmental Entities.

12.4.2. Vendor Personnel are not eligible for and Vendor shall ensure Vendor Personnel never claim they are eligible for or otherwise entitled to any employee benefits, including retirement benefits, insurance coverage, or the like, available by or through the State or any other Governmental Entity.

12.4.3. 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.

12.4.4. 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.

12.4.5. 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.

12.4.6. 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 herunder satisfies 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.

12.4.7. 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.

12.4.8. Notwithstanding the foregoing or anything else in this Agreement to the contrary, the Office may require Vendor to provide or require certain training to or of Vendor Personnel, such as training related to sexual harassment,

diversity training, or other training as may be required or encouraged by applicable law, rule, policy, or order.

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 appoint Scott Needleman 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 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. OCIO and the State of Iowa consents to the use of Amazon Web Services, inc. All subcontracts shall be subject to the 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 any Indemnitees from and against all third party 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, no Governmental Entity shall be 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. 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. Except as otherwise provided herein, including as it relates to EULAs, 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. Supersedes Former Agreements/Transition of Purchasing Instruments.

12.11.1. This Agreement supersedes all prior Agreements between the State of Iowa and Vendor for the Deliverables provided in connection with this Agreement.

12.11.2. To the extent Vendor or Vendor Contractors are performing or providing Deliverables under active Purchasing Instruments, Statements of Work, or other similar requisitions or like instruments pursuant to the Old Contract, Vendors performance or provisioning of Deliverables under such instruments shall transfer and continue under the terms and conditions of this Agreement.

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:

DLT SOLUTIONS, LLC

ATTN: LEGAL DEPARTMENT

2411 DULLES CORNER PARK, SUITE 800

HERNDON VA 20171.

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

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

12.14. Cumulative Rights. The various rights, powers, options, elections, and remedies of OCIO, the State, and Governmental Entities provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed by law, and shall in no way affect or impair the right of OCIO, the State, and Governmental Entities to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by OCIO, the State, or any Governmental Entity of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.15. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12.16. Time is of the Essence. Time is of the essence with respect to 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 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.

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. 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.

12.27. 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, at the sole expense of OCIO or the applicable Governmental Entity. 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.

12.28. 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.

12.29. 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.

12.30. Exclusivity. This Agreement is not exclusive. During the term of this Agreement, any Governmental Entity making purchases hereunder may obtain similar or identical Deliverables from other vendors.

12.31. Award of Related Agreements. Governmental Entities making purchases hereunder may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with Authorized Contractors' Project

Managers or Points of Contacts [POCs] 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.

12.32. 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

12.33. Attorney's Fees and Expenses. In the event Vendor defaults on any of its obligations under this Agreement, Vendor shall pay to the applicable Governmental Entity all costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the Governmental Entity) incurred by the applicable Governmental Entity in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.34. Care and Use 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. In addition to any other terms or conditions of this Agreement, Vendor, Vendor Contractors, and Vendor Personnel shall use Customer Property solely for purposes of providing or performing Deliverables under the Agreement; shall not use Customer Property to create, transmit, share, copy or display messages, images or materials that are for personal gain, solicitations, chain letters or messages, gaming, images or materials that are threatening, pornographic, sexually explicit, harassing or demeaning to any person or group; and 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. Vendor, Vendor Contractors, and Vendor Personnel shall have no expectation of privacy in any data or information created, stored, transmitted, or processed using Customer Property.

12.35. 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.

12.36. [Reserved]

SPECIAL TERMS AND CONDITIONS/ANCILLARY AGREEMENT #001

The following Special Terms and Conditions/Ancillary Agreement are part of and incorporated into the State of Iowa and DLT Solutions LLC, Amazon Web Services Products, Services, and Solutions and associated Amazon Products and Services by and between the State of Iowa, acting by and through the Office of the Chief Information Officer (**"OCIO"**), and DLT Solutions, a limited liability company organized under the laws of Virginia (**"Vendor"**). Capitalized terms not defined in this herein are as defined in the Agreement. These Special Terms and Conditions/Ancillary Agreement apply to any Deliverables provided to the Iowa Department of Revenue under the Agreement:

Iowa Department of Revenue
Confidential Information Requirements for 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/ANCILLARY AGREEMENT #002

The following Special Terms and Conditions/Ancillary Agreement are part of and incorporated into the State of Iowa and DLT Solutions LLC, Amazon Web Services Products, Services, and Solutions and associated Amazon Products and Services by and between the State of Iowa, acting by and through the Office of the Chief Information Officer (**"OCIO"**), and DLT Solutions, a limited liability company organized under the laws of Virginia (**"Vendor"**). Capitalized terms not defined herein are as defined in the Agreement. These Special Terms and Conditions/Ancillary Agreement apply to any Deliverables 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	http://dhs.iowa.gov/sites/default/files/DHS_Incident_Rpt_470-5134.docx	1900 Carpenter Ave, Des Moines, IA 50314	**Primary Contact:** Name: Debra Covington Phone: (515) 281-7747 Email: dcoving@dhs.state.ia.us Title: Information Security and Privacy Officer Iowa Department of Human Services
Iowa Veterans Home	https://ivh.iowa.gov/sites/default/files/documents/2017/12/data_breech.docx	Iowa Veterans Home 1301 Summit St. Marshalltown, IA 50158	**Primary Contact:** Phone: (641) 844-6352 E-mail: privacyofficer@ivh.state.ia.us

SAMPLE PURCHASING INSTRUMENT/STATEMENT OF WORK

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.

PURCHASING INSTRUMENT/STATEMENT OF WORK

The following Purchasing Instrument/Statement of Work (**"SOW"**) incorporates the terms and conditions of the State of Iowa Amazon Products and Services Umbrella Agreement, Contact No. _____(**"Agreement"**) between the State of Iowa, acting by and through the Office of the Chief Information Officer (**"OCIO"**), and _____, a corporation organized under the laws of _____ (**"Vendor"**), dated _____ __, 2019. This Purchasing Instrument 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 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. **Executive Summary/Project Scope.** Provide a high level summary of the project/Deliverables to be provided pursuant to this Purchasing Instrument and the scope of the project, including, for example:

   1.1 A general description of/nature of the Deliverables;

   1.2 Special considerations for implementing, configuring, or installing the Deliverables, including any technological considerations or constraints;

   1.3 Any other characteristics of this project that must be addressed to ensure the success of the project/provisioning of Deliverables.

2. **Specifics.**

   2.1 Solution Components. List the solution components (including Sourced Goods and Open Market Items, *e.g.*, equipment, hardware, Software, etc.) provided by Vendor that will be used to support the requirements. Identify any special configuration requirements, and describe how such equipment, hardware, or Software will integrate with the applicable Governmental Entity's infrastructure.

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

   2.3 Services. Provide information on the Services (*e.g.*, requirements development, solution design, configuration, installation) that will be provided by Vendor, and a description of the methodology Vendor will use to accomplish the work.

   2.4 Training and Knowledge Transfer. Provide an overview of training services to be provided by Vendor and any special requirements for specific knowledge transfer to support the applicable Governmental Entity's successful implementation and use of the Deliverables. If the intent is for the Governmental Entity's personnel to become self-sufficient in operating or maintaining the solution, determine the type of training necessary, and develop a training plan, for such user self-sufficiency.

   2.5 Support. Document the level of ongoing support, required from Vendor to effectively

make use of any Deliverables. This may include conversion support, legacy system integration, transition assistance, solution maintenance (including maintenance level), or other specialized consulting to facilitate delivery or use of the solution.

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

2.7 Extended Warranty Period. The default Warranty Period for any Deliverables or Software purchased under the Agreement is one (1) year. Please identify and document any extended Warranty Period here.

3. **Delivery Timeframes/Period of Performance.** Specify applicable delivery timeframes for any Deliverables to be provided hereunder, and the time frames during which any ongoing Deliverables will be provided, such as ongoing maintenance or support.

4. **Milestones, Payment Schedule, Retained Amount(s), Performance Measures, Compensation.** The following table identifies milestone events and Deliverables, associated schedules/timelines, associated payments, any Retained Amounts, and applicable Performance Standards. All Deliverables as defined below shall be subject to the Acceptance Testing process set forth in the Agreement. Subject to any assumptions noted below, failure of Vendor to meet the deadlines/timelines listed in the **"Schedule"** column below shall result in Vendor being liable to the Governmental Entity for the amount specified in the **"Performance Standards"** column. The following is intended solely for purposes of example.

#	Milestone	Deliverable(s)	Schedule	Total Payment	Retained Amounts	Net Payment	Performance Standards
1	Project Kick-Off Meeting	--	Effective Date + 5 days	$--	$--	--	
2	Site Survey	Project Plan	Effective Date + 10 days	$10,000	$1,000	$9,000	
3	Installation of Software	--	Effective Date + 15 days	$--	$--	$--	$1,000
4	Configuration and Vendor testing	Testing results	Effective Date + 20 days	$10,000	$1,000	$9,000	$1,000
5	Training	Training Manual	Effective Date + 30 days	$20,000	$2,000	$18,000	$1,000
6	Governmental Entity	--	Effective Date + 30	$--	$--	$--	

	Acceptance Testing		days				
7	Project Completion		Effective Date + 45 days	$10,000	($4,000)	$14,000	$2,000
			Total	$50,000		$50,000	

5. **Governmental Entity Responsibilities.** The following is solely for purposes of example.

   5.1 The Governmental Entity shall commit staff and resources necessary for successful execution of the Agreement.

   5.2 The Governmental Entity shall make personnel available to discuss and provide the necessary information required for Vendor to perform/provide the Deliverables, to perform testing, and to define delivery protocols for data feeds.

   5.3 The Governmental Entity shall determine, define, and execute communication and reporting protocols related to the Agreement.

   5.4 The Governmental Entity shall identify applicable training requirements.

6. **Assumptions.** List any assumptions here.

7. **Security.** Document (and subsequently provide to Vendor) any additional security requirements over-and-above the standard security requirements required by the Agreement, including any applicable Governmental Entity's then-current security policies, standards, procedures, and/or exceptions that apply to this project.

8. **Dispute Resolution/Performance Monitoring.** In addition to any terms or conditions in this Agreement related to dispute resolution/performance monitoring, it is the intent of the parties that any disputes or issues arising related to performance under this Purchasing Instrument shall be communicated to the appropriate Project Manager. Vendor shall be solely responsible for addressing any disputes or performance issues with any Vendor Personnel or resources made available through Vendor or Vendor Contractors, directly or indirectly, under the Agreement and this Purchasing Instrument and for ensuring adequate performance/provisioning of Deliverables hereunder and successful completion of this project. In the event of a dispute or performance issues, the parties shall discuss the matter in good faith and escalate the issue, as appropriate, within their respective organizations. Except with regard to actions for equitable relief, the parties shall attempt to resolve all disputes informally for a period of not-less-than ten (10) days before instituting any legal proceedings in a court of competent jurisdiction.

9. **Contacts.** The following shall be the Parties' primary contacts for this Purchasing Instrument and, unless otherwise set forth herein, the Project Manager(s):

Vendor Representative: _____

Address: _____

_____

Telephone number: _____
Fax number: _____
Email address: _____

Representative of applicable
Governmental Entity: _____
Address: _____
_____
_____

Telephone number: _____
Fax number: _____
Email address: _____

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

[Name] **("Governmental Entity")**		_____ **("Vendor")**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____

Vendor, please supply SLAs applicable to this Engagement. The intent is that SLAs will also be subject to the terms and conditions of the Agreement.