

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

Master Agreement #: AR3107

Participating Addendum # 2024-BUS-0101

Contractor: **INTERNATIONAL BUSINESS MACHINES CORP.**

Participating Entity: **STATE OF IOWA**

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

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. Scope: This addendum covers **Cloud Solutions** led by the State of *Utah* for use by state agencies and other entities located in the Participating State authorized by that State's statutes.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Iowa. Issues of interpretation and eligibility for participation are solely within the authority of the Director of the Department of Management or their designee.
3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the Director of the Department of Management within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Urania Davis
Address:	6303 Barfield Rd, NE Sandy Springs, GA 30328
Telephone:	(919) 486-6625
Fax:	N/A
Email:	Urania.davis1@ibm.com

Participating Entity

Name:	Jessica Turba
Address:	200 E. Grand Avenue, Des Moines, IA 50309
Telephone:	(515) 321-6404
Fax:	N/A
Email:	Jessica.Turba@iowa.gov



5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

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

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

This Master Agreement includes the terms and conditions set forth in the State of Iowa's IBM Cloud Solutions Master Agreement #2024BUS0101.

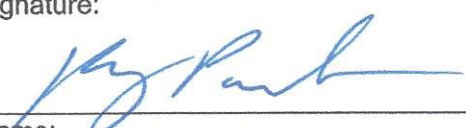
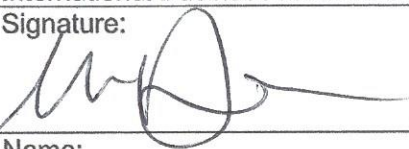
6. Fulfillment Partners: All Fulfillment Partners authorized in the State of Iowa, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales support to participants in the NASPO ValuePoint Master Agreement. The contractor's Fulfillment Partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement must include the Participating Addendum contract number in order to be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement.

NASPO ValuePoint
PARTICIPATING ADDENDUM



CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

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

Participating Entity: State of Iowa, Department of Management	Contractor: International Business Machines Corporation
Signature: 	Signature: 
Name: Kraig Paulsen	Name: Urania Davis
Title: Director	Title: Contract Support Professional
Date: 5-22-24	Date: 5-24-24

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

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

**Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.**

**Iowa Department of Management
Contracts Declaration & Execution ("CD&E")**

Title of Contract: IBM Cloud Solutions Master Agreement ("Agreement")		Contract Number: 2024BUS0101
State Agency's Name: Iowa Department of Management ("DOM")		
Contractor's Name: International Business Machines Corp. ("Contractor").		
Contract to Begin/Effective Date: Date of last signature below	Date of Expiration: September 15, 2026	
Preamble. This Agreement for IBM Cloud Solutions is made and is effective as of the Effective Date, by and between the State of Iowa, acting by and through the Iowa Department of Management ("DOM"), and International Business Machines Corporation, a corporation organized under the laws of State ("Contractor"). The parties may be referred to herein individually as a "Party" or collectively as the "Parties"; provided, however, that where the context clearly requires, the term "Party" or "Parties" may refer to or include the Purchasing Entity making individual purchase(s) hereunder.		
<u>Notes:</u> This Agreement does not guarantee any minimum level of purchases, usage, or compensation; This Agreement is available to any Purchasing Entity, including State Agencies and political subdivisions, in the State of Iowa; Pursuant to Section 13.1, Purchasing Entities making purchases hereunder may require Contractor, Contractor's Subcontractor(s), or Contractor Personnel to execute mutually agreeable ancillary agreements to address compliance, legal, confidentiality, and privacy concerns that may be unique to an applicable Purchasing 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 Purchasing Entity.		

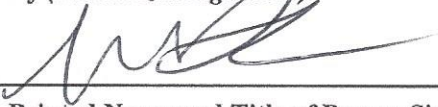
IN WITNESS WHEREOF, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which

are hereby acknowledged, the Parties have entered into this Agreement and have caused their duly authorized representatives to execute this Agreement.

Contractor:

International Business Machines Corporation

By (Authorized Signature)



Date Signed

5-24-24

Printed Name and Title of Person Signing:

Urania Davis, Contract Support Professional

Address:

6303 Barfield Rd, NE

Sandy Springs, GA 30328

State of Iowa, acting by and through the Iowa Department of Management:

By (Authorized Signature)



Date Signed

5-22-24

Printed Name and Title of Person Signing:

Kraig Paulsen, Director

Address:

1007 E. Grand Ave., G13

Des Moines, IA 50319

Iowa Department of Management
IBM Cloud Solutions Master Agreement Terms

1. Overview.

- 1.1. Purpose. This Agreement establishes the terms and conditions pursuant to which a Purchasing Entity may procure IBM Cloud Solutions.
- 1.2. Term. The term of this Agreement shall be the effective date of this Agreement through the NASPO Contract termination date of September 15, 2026, unless terminated earlier in accordance with the terms of this Agreement.
- 1.3. Relationship between this Agreement and Individual Purchasing Instruments. Each Purchasing Instrument (i.e., a Transaction Document and/or Statement of Work) 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 Contractor and the applicable Purchasing Entity. To the extent a Purchasing Entity other than DOM makes a purchase hereunder pursuant to a Purchasing Instrument executed by it, such Purchasing Entity shall be solely responsible for any payments due and duties and obligations otherwise owed Contractor under this Agreement. In addition, notwithstanding any other provision of this Agreement to the contrary, DOM bears no obligation or liability for any other Purchasing Entity's losses, liabilities, or obligations, including Contractor'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 Contractor's failure to perform, arising out of or relating in any way to this Agreement.
- 1.4. Incorporation of NASPO Contract. NASPO Agreement is hereby incorporated by reference.
- 1.5. Priority of Terms. Except as expressly provided herein, in event of a conflict, the priority of contract terms shall be as follows: Participating Addendum (including this Agreement), NASPO Agreement, and any Purchasing Instruments executed hereunder.

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 Purchasing Entity has determined a portion of the Deliverables, satisfy its Acceptance Tests. **"Final Acceptance"** means the Purchasing Entity has determined all Deliverables satisfy the Purchasing Entity's Acceptance Tests. **"Non-acceptance"** means the Purchasing Entity has determined that a portion of or all of the Deliverables have not satisfied the Purchasing Entity's Acceptance Tests.
- 2.2. **"Acceptance Criteria"** means the written specifications, goals, performance measures or standards, testing results, requirements, technical standards, or other criteria designated by the Purchasing Entity and against which Acceptance Tests are conducted, including any of the foregoing stated or expressed in this Agreement, a Purchasing Instrument, the NASPO Contract, or Deliverables provided thereunder.
- 2.3. **"Acceptance Tests" or "Acceptance Testing"** means the tests, reviews, and other activities that are performed by or on behalf of the Purchasing Entity to determine whether

Deliverables(s) meet Acceptance Criteria or otherwise satisfy the Purchasing Entity. Specific Acceptance Criteria will be documented in an applicable Purchasing Instrument/Statement of Work.

- 2.4. **"Agreement,"** unless the context requires otherwise, means the State of Iowa's Participating Addendum for the NASPO Agreement, these IBM Cloud Solutions Master Agreement Terms (i.e., CD&E) and all other attachments to the CD&E or accompanying the CD&E, including Purchasing Instruments executed hereunder.
- 2.5. **"Authorized Contractors"** means independent contractors, consultants, or other Third Parties (including other Purchasing Entities) who are retained, hired, or utilized by the Purchasing Entity to use, maintain, support, modify, enhance, host, or otherwise assist the Purchasing Entity with any Deliverables or Cloud Services provided hereunder.
- 2.6. **"Cloud Services" or "Services"** means, collectively, the IBM cloud services as defined in the PA and NASPO Agreement (e.g., IBM software as a service offerings and related IBM Programs) listed in Purchasing Entity's Order and defined in the Service Specifications. The term "Cloud Services" does not include "Professional Services," as defined by the NASPO Contract.
- 2.7. **"Confidential Information"** is, in addition to the definition set forth in the NASPO Contract, defined to include any information defined as confidential pursuant to applicable federal, state, or local laws and regulations, including Iowa Code Chapter 22.
- 2.8. **"Customer Data" or "Data"** means all information, data, materials, or documents (including Confidential Information and Personal Protected Data) reduced to tangible form originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from the Purchasing Entity, the State of Iowa, State Users, directly or indirectly, including from any Authorized Contractors of any of the foregoing, related to this Agreement.
- 2.9. **"Customer Property"** means any property, whether tangible or intangible, of or belonging to the Purchasing Entity, including Data and Customer-Owned Deliverables, software, hardware, programs, or other property possessed, owned, or otherwise controlled by the Purchasing Entity, including Third Party Software or Third Party Intellectual Property.
- 2.10. **"Customer-Owned Deliverables"** means any Deliverables discovered, created, or developed by Contractor, Contractor's Subcontractors, or Contractor Personnel at the direction of the Purchasing Entity or for a specific project under this Agreement that is paid for by the State of Iowa and/or the purchasing state entity, including copyrights in such Deliverables.
- 2.11. **"Deficiency"** means a defect, flaw, error, bug, failure, omission, interruption of service, or other problem related to the Cloud Services or a Deliverable(s), that is any failure of a Services or Deliverable(s) to conform to or meet an applicable Specification or requirements contained in the Documentation or the Contract.
- 2.12. **"Deliverables"** means documents, reports, analytics, and other tangible work products to be delivered by Contractor in connection with a Purchasing Instrument executed hereunder.
- 2.13. **"Documentation"** means technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, or work papers developed by Contractor,

Contractor's Subcontractors, or Contractor Personnel in conjunction with any Deliverables(s), in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.

- 2.14. **"Finally Determined"** means when a claim or dispute has been finally determined by a court of competent jurisdiction or other agreed-upon governing body and either (a) no associated appeal has timely been sought if capable of being sought, or (b) any and all appellate rights properly exercised have otherwise been exhausted.
- 2.15. **"I.T. Governance Document(s)" or "Governance Document(s)"** means any information technology policies, standards, processes, guidelines, or procedures developed by the DOM or, as applicable, by the Purchasing Entity and as specifically agreed upon by the Parties in a Transaction Document as applicable to a particular Cloud Service.
- 2.16. **"NASPO Contract"** means NASPO Contract Number AR3107, available at <https://www.naspovaluepoint.org/portfolio/> issued and awarded by and through the state of Utah via NASPO ValuePoint pursuant to Request for Proposal SK18008 ("RFP").
- 2.17. **"Personal Protected Data"** shall include any data or information covered under or protected by Iowa Code chapter 715C or by Iowa Code sections 422.20 and 422.72.
- 2.18. **"Purchasing Instrument"** means an individual transactional document executed hereunder for the purchase of Services or Deliverable(s) pursuant to this Agreement, including a **"Purchase Order"** or **"Statement of Work"** executed hereunder (*see* the Sample Purchasing Instrument/Statement of Work attached hereto for a sample Statement of Work), regardless of form, and which identifies the specific Services or Deliverable(s) to be purchased and any Acceptance Criteria or Specifications related thereto.
- 2.19. **"Specifications"** means written requirements, technical standards, performance standards, and other written specifications related to any Deliverable(s) or Cloud Services described or stated in this Agreement (including any exhibit or documentation attached to, or provided in connection with, this Agreement), or any Purchasing Instrument(s) executed thereunder.
- 2.20. **"State Users"** means the State of Iowa, DOM, and any other Purchasing Entity as may be later designated by the Purchasing Entity executing Purchasing Instruments hereunder in its sole discretion and communicated to Contractor in writing, and any employees or Authorized Contractors of any of the foregoing.
- 2.21. **"Third Party"** means a person or entity (including any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.
- 2.22. **"Third Party Intellectual Property"** shall mean intellectual property, including Third Party Software, licensed, made, conceived, or developed by a Third Party and provided or used by or on behalf of the Purchasing Entity or Contractor, as applicable, including:
- 2.22.1. As it relates to intellectual property provided to the Purchasing Entity by Contractor, intellectual property comprising or embedded in the Deliverables provided by Contractor under this Agreement.
- 2.22.2. As it relates to intellectual property provided to Contractor by the Purchasing Entity, intellectual property comprising or embedded in any Customer Property,

2.23. **"Third Party Software"** means any software owned or licensed by a Third Party.

3. Modified Master Agreement Terms.

- 3.1. The definition of "Data" is deleted in its entirety and replaced with the definition of "Customer Data" or "Data" set forth above.
- 3.2. Section 5 **Assignment/Subcontracts**, in the Master Agreement is amended to add the following:
 - 3.2.1. Notwithstanding anything herein to the contrary, a Participating Entity may freely assign its Participating Addendum, in whole or in part, without prior approval of Contractor in the event of a legislative or executive restructuring of State government, or where the Participating Entity's relevant administrative responsibilities have been assigned to another administrative unit of the State.
- 3.3. Section 7 **Termination**, in the Master Agreement is amended to add the following:
 - 3.3.1. Notwithstanding anything in the Master Agreement to the contrary, Contractor shall not have the right to terminate this Participating Addendum for convenience.
 - 3.3.2. Notwithstanding anything to the contrary in any of the documents comprising the Agreement, Orders shall not automatically renew.
- 3.4. Section 8 **Confidentiality, Non-Disclosure, and Injunctive Relief**, in the Master Agreement is amended to add the following:
 - 3.4.1. The State's obligation to maintain the confidentiality of Contractor Confidential Information provided to the State under the Agreement is conditioned upon and subject to Iowa Code Chapter 22 (Examination of Public Records).
- 3.5. Section 13 **Indemnification**, in the Master Agreement is amended to add the following:
 - 3.5.1. Neither Contractor nor any attorney engaged by Contractor shall defend against any third party claims in the name of the State of Iowa or any Purchasing Entity making purchases hereunder, nor purport to act as legal representative of the State of Iowa or any Purchasing Entity making purchases hereunder, without first having provided notice to the Purchasing Entity or Purchasing Entity, as applicable, and received a written approval. Provided the Purchasing Entity issues Contractor written approval to defend against the third party claim(s) with an attorney of Contractor's own choosing, Contractor will defend Client against third party claim(s) for IP infringement and pay amounts finally awarded by a court against Purchasing Entity or included in a settlement approved by Contractor. Contractor has no responsibility for claims based on: i) Non-Contractor Products that are not provided, or formally approved for us with Contractor product, by Contractor ; iii) Contractor's proper use of any Purchasing Entity required third-party product or service related to the administration of the transaction; iv) any violation of law or third-party rights caused by Purchasing Entity Content or v) Purchasing Entity's use of a noncurrent version or release of a Contractor's Cloud Product and Cloud Services when an infringement claim could have been avoided by using a current version or release. Contractor's

indemnification obligation for third party IP infringement claims is not subject to the limitation of liability cap.

- 3.5.2. Notwithstanding anything to the contrary contained in the Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.
- 3.5.3. Notwithstanding anything to the contrary in the Agreement or any contract document, under no circumstances will the State indemnify, defend or hold harmless Contractor, and any such provision in the Agreement or any contract document shall be of no force and effect.
- 3.6. Section 21 **Charges, Taxes, and Payment**, is deleted in its entirety and replaced with the following:
- 3.6.1. Charges, Taxes and Payment: Orders under this Master Agreement are fixed-price or fixed-rate orders, not cost reimbursement contracts. Unless otherwise stipulated in the Participating Addendum, Payment is normally made within 60 days following the date of a correct invoice is received. Purchasing Entities reserve the right to withhold payment of a portion (including all if applicable) of disputed amount of an invoice. After 60 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be remitted by mail or electronically. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge. Purchasing Entity agrees to pay all applicable charges specific for a Service by Contractor and charges for use in excess of authorizations. Charges are exclusive of applicable taxes, levies, or fees imposed by any governmental authority resulting from Purchasing Entity's acquisitions under this Master Agreement, and any late payment fees. Charges shall be identified on Contractor's invoice. Prepaid Services must be used within the applicable period. Contractor does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.
- 3.7. Section 27 **Administrative Fees** is amended to add the following language:
- 3.7.1. Without affecting the prices/rates, Contractor shall provide to the Participating Entity a 1.00% administrative fee on all sales made by and through this Agreement. This 1.00% administrative fee shall be paid quarterly to:

Attn: Business Services Division Administrator

Iowa Department of Management

200 E Grand Ave.

Des Moines, IA 50309

Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31

December 31	January 31
March 31	April 30

- 3.8. Section 32 **Transition Assistance**, subsection c, in the Master Agreement, is deleted and replaced with the following:
- 3.8.1. c. The Contractor must maintain the confidentiality, availability, and security of a Purchasing Entity's Data during the transition services, and thereafter as required in the Participating Addendum or as required by law.
4. Section 44(f)(C) **Limitation of Liability**, in the Master Agreement, is deleted and replaced with the following:
- 4.1. Notwithstanding the above or anything in this Master Agreement to the contrary, and to the extent allowed by applicable laws, including but not limited to Iowa Admin. Code 11—120(5), (a) the maximum liability of any Party for direct damages under this Master Agreement shall be one (1) time the Contract Value ("**Contract Value**" is defined as the aggregate total compensation to be paid by the applicable Purchasing Entity to Contractor under the applicable Purchasing Instrument executed by the individual Purchasing Entity hereunder, including all renewals and extensions or other like continuation, thereof); and (b) no Party shall be liable to the other for consequential, incidental, indirect, special, or punitive damages; provided, however, under no circumstances shall the foregoing limitations apply to any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:
- 4.1.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or the gross negligence;
- 4.1.2. Death, bodily injury, or damage to real or personal property;
- 4.1.3. Any contractual obligations of Contractor calling for indemnification for third-party claims for intellectual property infringement;
- 4.1.4. Any claims arising under provisions of the Agreement calling for indemnification of any Purchasing Entity, including the State of Iowa, or any Indemnatee for third-party claims against any Purchasing Entity, including the State of Iowa, for bodily injury to persons or for damage to real or tangible personal property caused by Contractor's negligence or willful conduct.
- 4.2. Data Security Liability shall be governed by the following Aggregate Data Security Cap:
- Contractor's entire Data Security Liability for all claims arising from Contractor's breach of its data security obligations that are set forth in this Agreement shall not exceed ten million dollars (\$10,000,000), unless the amount paid or payable under this Agreement exceeds five million dollars (\$5,000,000), in which case Contractor's entire Data Security Liability for all claims arising from Contractor's breach of its data security obligations that are set forth in this Agreement shall not exceed fifteen million dollars (\$15,000,000)(Aggregate Data Security Cap). These limitations apply collectively to Contractor (IBM), its affiliates, contractors, and suppliers.

For purposes of the above Aggregate Data Security Cap, Data Security Liability means Contractor's liability caused by Contractor's breach of its contractual obligations for data security that are set forth in the Agreement and the applicable Individual Purchasing Instrument, and resulting in unauthorized access or disclosure of Customer Data.

5. Compensation and Additional Rights and Remedies.

- 5.1. Pricing/Compensation. The fees for the Cloud Services, and Deliverables shall be as set forth in the NASPO Contract and any applicable Purchasing Instrument(s). Failure of the Purchasing Entity to pay any undisputed fees that may be owing in accordance with the terms of this Agreement shall not result in any suspension or termination of any Services or Deliverables, so long as payment of such undisputed fees is made within the applicable cure period.
- 5.2. No Additional Fees. Other than as permitted by Section 4.1 (Pricing/Compensation), the Purchasing Entity shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Contractor 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. Contractor shall be responsible for all other costs, charges, and expenses it incurs in connection with this Agreement, including equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, travel and lodging, and all other operational and administrative costs and expenses.
- 5.3. Payment does not Imply Acceptance. Payment, including final payment, shall not be construed as acceptance of any Services or Deliverables with Deficiencies, Errors, or incomplete work, and Contractor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement.
- 5.4. Invoices. Upon receipt of written notice of Acceptance from the Purchasing Entity with respect to one or more Services or Deliverable(s), or in the frequencies set forth in the applicable Purchasing Instrument, Contractor shall submit an invoice to the Purchasing Entity requesting payment of the fees or other compensation to which it is entitled under Section 5.1(Pricing/Compensation), less any other applicable offsets. All invoices submitted by Contractor shall comply with 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. The Purchasing Entity shall verify Contractor's performance/provisioning of Services or Deliverable(s) outlined in the invoice before making payment. The Purchasing Entity shall pay all approved invoices in arrears and, to the extent applicable, in conformance with Iowa Code section 8A.514 and corresponding implementing rules, regulations, and policies. The Purchasing Entity may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not, to the extent applicable, act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Purchasing Entity shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Purchasing Entity believes the invoice is inaccurate or incorrect in any way. Notwithstanding, the Participating Purchasing Entity, in its sole discretion, may elect to prepay fees for services and deliverables in accordance with applicable laws, rules, policies, and procedures, including State of Iowa Accounting Policies and Procedures, available at: <https://das.iowa.gov/state-accounting/sae-policies-procedures-manual>.

- 5.5. Erroneous Payments and Credits. Contractor shall promptly pay or refund to the Purchasing Entity the full amount of any overpayment or erroneous payment within sixty (60) days after either discovery by Contractor or notification by the Purchasing Entity of the overpayment or erroneous payment. In the event Contractor fails to timely pay or refund any amounts due the Purchasing Entity under this Section (Erroneous Payments and Credits), the Purchasing 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 Purchasing Entity may, in its sole discretion, elect to have Contractor apply any amounts due and owing the Purchasing Entity under this Section (Erroneous Payments and Credits) against any amounts payable by the Purchasing Entity under this Agreement.
 - 5.6. Set-off Against Sums Owed by Contractor. Pursuant to and in accordance with Iowa law and policies, in the event Contractor owes the Purchasing Entity any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Purchasing Entity may set off such sum against any sum invoiced to the Purchasing Entity by Contractor in the Purchasing Entity's sole discretion. Any amounts due the Purchasing Entity as damages may be deducted by the Purchasing Entity from any money or sum payable by the Purchasing Entity to Contractor pursuant to this Agreement or any other agreement between Contractor and the Purchasing Entity.
6. **Acceptance Tests.** As may be required in a Purchasing Instrument, Deliverables and Cloud Services may be subject to the Purchasing Entity's Acceptance Testing and Acceptance, as may be further described in a Purchasing Instrument(s). Upon completion of all work to be performed by Contractor with respect to any Deliverable, group of Deliverables, or Cloud Service, Contractor will deliver a written notice to the Purchasing Entity certifying that the foregoing meets and conforms to applicable Acceptance Criteria and is ready for the Purchasing Entity to conduct Acceptance Tests as may be required by Purchasing Entity (noting that the Purchasing Entity may accept Deliverables without a corresponding written notice as agreed to by the Parties). Within five (5) business days after the Purchasing Entity has completed its Acceptance Testing, the Purchasing Entity shall provide Contractor with written notice of Acceptance or Non-acceptance with respect to each Deliverable and/or Cloud Service, or any portion thereof, evaluated during such Acceptance Testing. If the Purchasing Entity determines that a Deliverable(s) or Cloud Service(s), in whole or in part, satisfies its Acceptance Tests, the Purchasing Entity shall provide Contractor with notice of Acceptance with respect to such Deliverable(s) or Cloud Service(s). If the Purchasing Entity determines that a Deliverable(s) or Cloud Service(s), in whole or in part, fails to satisfy its Acceptance Tests, the Purchasing Entity shall provide Contractor with notice of Non-Acceptance with respect to such Deliverable(s) or Cloud Service(s). In the event the Purchasing Entity provides notice of Non-Acceptance to Contractor with respect to any Deliverable(s) or Cloud Service(s), Contractor shall correct and repair such Deliverable(s) or Cloud Service(s), and submit it to the Purchasing Entity within ten (10) days of Contractor's receipt of notice of Non-acceptance so the Purchasing Entity may re-conduct its Acceptance Tests with respect to such Deliverable(s) or Cloud Service(s).
7. **Ownership and Intellectual Property.**
 - 7.1. Ownership of Contractor-Owned Deliverables and Cloud Services. Except as specifically granted in a Purchasing Instrument, other agreement, or as otherwise provided in this Agreement, Contractor shall own all Deliverables and Cloud Services that were

independently and exclusively developed by Contractor prior to the Effective Date of this Agreement ("**Contractor-Owned Deliverables and Cloud Services**").

- 7.2. Ownership and Assignment of Customer-Owned Deliverables. When Contractor provides Deliverables, Purchasing Entity will own the copyright in works of authorship that Contractor develops for Customer under this Agreement and/or any Purchasing Instrument. Contractor's Subcontractors, and Contractor Personnel hereby assigns, transfers, and conveys to the Purchasing Entity copyright owner to Customer-Owned Deliverables. Where a Deliverable contains proprietary information, Contractor will identify that such Deliverable contains proprietary information, and Purchasing Entity will safeguard the information as required under the NASPO Contract, this Agreement, and/or any Purchasing Instrument. At Purchasing Entity's request, Contractor will, at no cost to Purchasing Entity, create a version of the Deliverable(s) that removes proprietary information. Purchasing Entity shall assign to Contractor a royalty-free license to use templates, Documents, or other components of Deliverables developed under this Agreement and/or any Purchasing Instrument in support of Contractor's other Purchasing Entity clients, provided that no Confidential Information or Customer Data be included in such templates, Documents, or components of Deliverables.
- 7.3. Third Party Intellectual Property. Except as otherwise agreed to by the Parties in writing, in the event a Deliverable is comprised of Third Party Intellectual Property, Contractor shall work with the Purchasing Entity to identify the license agreement for such Third party Intellectual Property and to obtain the right and license to use Third Party Intellectual Property in Deliverables provided to Purchasing Entities.
- 7.4. Rights of the Federal and State Government. If all or a portion of the funding used to pay for Customer-Owned Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights, including a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes, the Customer-Owned Deliverables developed under this Agreement and the copyright in and to such Customer-Owned Deliverables.
- 7.5. Customer Property. Contractor, Contractor's Subcontractors, and Contractor Personnel may have access to Customer Property to the extent necessary to carry out its responsibilities under the Agreement and in compliance with Purchasing Entity's security and confidentiality requirements. Customer Property shall at all times remain the property of the Purchasing Entity or applicable Third Party owning Customer Property that has been licensed to the Purchasing Entity. Contractor, Contractor's Subcontractors, and Contractor Personnel or related Deliverables shall comply with the license terms, conditions, or restrictions applicable to any Customer Property that has been licensed to the Purchasing Entity or otherwise made available or accessible to the Purchasing Entity or Contractor by a Third Party, including to the extent related Deliverables must interface, integrate, or connect to such Customer Property.

8. **Additional Representations, Warranties, and Covenants.**

- 8.1. Workmanlike Manner. Contractor represents, warrants, and covenants that all Services to be performed under this Agreement shall be performed in a professional, competent,

diligent, and workmanlike manner by knowledgeable, trained, and qualified personnel, all in accordance with the terms and conditions of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects.

8.2. Compliance with Law. Contractor, Contractor's Subcontractors, and Contractor Personnel have complied with, and shall comply with the following laws to the extent applicable to the performance of this Agreement:

- 8.2.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under Iowa Code chapter 216 and section 19B.7 and corresponding rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission.
- 8.2.2. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
- 8.2.3. Iowa Code sections 422.20 and 422.72.

Contractor shall take such steps as necessary to ensure Contractor Subcontractors and Contractor Personnel providing Cloud Services or Deliverables under this Agreement are bound by the terms and conditions contained in this Section 7.2 (Compliance with Law).

8.3. No Conflicts. No relationship shall exist at the time of the formation of this Agreement, or will exist during the Term of the Agreement, between Contractor, Contractor's Subcontractors, and Contractor Personnel and the Purchasing Entity or the State of Iowa or any of its employees or Authorized Contractors that is or may constitute a conflict of interest or appearance of impropriety, or that would conflict in any manner or degree with the performance of its obligations under this Agreement. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement and any Purchasing Instruments executed hereunder, and Contractor, Contractor's Subcontractors, and Contractor Personnel shall not engage in any conduct that would violate that chapter.

9. **Additional Security/Privacy**

9.1.1. *Compliance/Audits.*

9.1.1.1. *Compliance.* Annually throughout the term, Contractor shall obtain and provide the Purchasing Entity upon request, at its own cost, documentation confirming the Cloud Services alignment with their security standards which security standards may be published at the following link: <https://www.ibm.com/cloud/compliance>.

9.1.1.2. *Security Audit.* Contractor agrees to comply with reasonable requests to inspect Contractor's compliance with the security requirements outlined herein. Such Inspections shall be limited to reviewing Contractor's ISO/IEC certifications or, upon request, an independent third-party security assessment report. Purchasing Entity and/or Purchasing Entity's regulators shall limit security auditing under this section to once annually unless otherwise agreed to by the Parties or specified in a Purchasing Instrument.

9.1.1.3. *Access to Security Logs and Reports.* IBM will notify Client without undue delay upon confirmation of a Security Incident that is known or reasonably suspected by IBM to affect Client. IBM will provide Client

with reasonably requested information about such Security Incident and the status of any IBM remediation and restoration activities.

- 9.1.2. *Right to Remove Individuals.* Should the Purchasing Entity be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any Contractor Personnel, the Purchasing Entity may request the replacement of such Contractor Personnel ("**Replacement Request**"). The Replacement Request shall be in writing and upon receipt of the request, Contractor shall make reasonable efforts to furnish a qualified and acceptable replacement within thirty (30) business day. If the Purchasing Entity, in its sole discretion, determines Contractor Personnel pose a potential security risk and notifies Contractor of such security risk in its Replacement Request, Contractor shall immediately remove such individual; any replacement furnished by Contractor in connection with such a request may not perform or provide Services or Deliverables to the Purchasing Entity unless and until the Purchasing Entity gives its consent to Contractor's use of such replacement.

10. General Provisions

- 10.1. Immigration Status. Contractor is responsible for ensuring Contractor Personnel possess and maintain valid Visas for any Contractor Personnel for whom a Visa is required. The Purchasing Entity requires Contractor and Contractor's Subcontractor(s) to conduct E-Verify employment-eligibility verifications of Contractor Personnel performing or providing Services or Deliverables hereunder, including any Contractor Personnel who may have access to Customer Property or Customer Data. Contractor shall be responsible for costs associated with the E-Verify process and shall provide the Purchasing Entity with the results of this process in a mutually agreeable form and manner at the time or in intervals as mutually agreed to by the Parties.
- 10.2. No Publicity. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Contractor shall not make any media release or other public announcement relating to or referring to this Agreement, a Purchasing Instrument, or the Services or Deliverables provided hereunder without the Purchasing Entity's prior written consent. Contractor shall acquire no right to use, and shall not use without the express written permission of Purchasing Entity, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the State of Iowa, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; (b) to express or to imply any endorsement of Contractor or Contractor's Services or Deliverables by the State of Iowa; or (c) in any manner other than expressly in accordance with this Agreement.
- 10.3. Choice of Law/Forum. Notwithstanding anything in the NASPO Contract or any Related Agreement to the contrary, this purchase shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this purchase, including after expiration or termination of the same, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Contractor: (i)

consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of the NASPO Contract, this Agreement, and any Purchasing Instruments arising thereunder, 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.

- 10.4. Use of Third Parties. No subcontract or other delegation of work shall relieve or discharge Contractor from any obligation, provision, or liability under this Agreement, the NASPO Contract, or any Purchasing Instruments arising thereunder. Contractor shall remain responsible its performance under this Agreement, the NASPO Contract, or any Purchasing Instruments arising thereunder and for compliance with the terms, conditions, and requirements set forth in the same.
- 10.5. Integration. This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included in this Agreement, the NASPO Contract, Participating Addendum, and Purchasing Instruments, including their attachments, arising thereunder.
- 10.6. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Purchasing Entity and Contractor, failure by the Purchasing Entity or Contractor 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.
- 10.7. Notices. Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice as identified on the CD&E, or on the applicable Purchasing Instrument, as applicable, at the address of the Party to receive notice. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS.
- 10.8. Cumulative Rights. The various rights, powers, options, elections, and remedies of the Parties provided for in this Agreement and under the NASPO Contract shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies, or priorities allowed by law, and shall in no way affect or impair the right of the Parties to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by a Party of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 10.9. 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.
- 10.10. Timely Performance. Contractor Personnel providing Services and Deliverables hereunder shall be responsive to the Purchasing Entity's requirements and requests in accordance with any specific timelines identified in a duly executed Purchasing Instrument.

- 10.11. Authorization. The Parties represent and warrant that they have the right, power, and authority to enter into and perform its obligations under this Agreement and that they have 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 the Parties, enforceable in accordance with its terms.
- 10.12. Successors in Interest. All terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, and legal representatives.
- 10.13. Headings or Captions and Terms. The section headings or captions set forth in this Agreement are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation" or "but not limited to." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 10.14. Multiple Counterparts and Electronic Signatures. This Agreement and all related Special Terms and Conditions, and/or Purchasing Instruments that are executed or may be executed hereunder, including any amendments to any of the foregoing, may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each such document(s) shall constitute an original. Signatures on such documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures, with such scanned and electronic signatures having the same legal effect as original signatures. Such documents may be accepted, executed, or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("**E-Sign Act**"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act, codified at Iowa Code chapter 554D ("**UETA**"), or any other applicable state law, rule, policy, standard, directive, or order. Any document accepted, executed, or agreed to in conformity with such laws, rules, policies, standards, directives, or orders will be binding on the signing Party as if it were physically executed. The Parties acknowledges and agree they will not contest the validity or enforceability of any such document(s), including under any applicable statute of frauds, because they were accepted, signed, or transmitted in electronic form. The Parties further acknowledge and agree that they will not contest the validity or enforceability of a signed scanned or facsimile copy of any such document(s) on the basis that it lacks an original handwritten signature, or on the basis that the Parties were not signatories to the same counterpart.
- 10.15. Not a Joint Venture. Nothing in this Agreement, the NASPO Contract, or any related Purchasing Instruments 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.

- 10.16. Attachments. The Parties agree that if an Addendum, Attachment, Rider, Schedule, Appendix, or Exhibit is attached hereto by the Parties, and referred to herein, then the same shall be deemed incorporated herein by reference as if fully set forth herein.
- 10.17. Taxes. Contractor shall be responsible for paying any applicable taxes incurred by Contractor in the performance of this Agreement. The Purchasing Entity is exempt from the payment of Purchasing Entity sales and other taxes: https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf.

11. Use of Artificial Intelligence (AI).

- 11.1. "AI" or "Artificial Intelligence", shall mean a machine-based system that infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. For clarity, Contractor shall not be required to obtain approval or to identify commercially available software that includes AI technologies if such software is not being used by Contractor for the purpose of generating content or automating processes in connection with services provided under this Agreement.
- 11.2. Advance Approval for AI Usage. Contractor shall obtain prior written approval from DOM or the Purchasing Entity, as applicable, before utilizing artificial intelligence (AI) technology in the provision of services under this Agreement or Purchasing Instruments entered into pursuant to this Agreement. The Contractor shall clearly identify in writing the specific AI technologies to be employed, their intended functions, and their potential impact on service delivery, and the parties shall negotiate in good faith any additional terms associated with Contractor's provision or use of such AI technology.