

STATE OF IOWA GENERAL TERMS

Section 1. Compensation

1.1 Pricing. The Contractor will be paid for the services described in the Scope of Work in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work.

The Contractor shall submit, on a frequency established on the Contract Declarations & Execution page(s) an invoice for services rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code § 8A.514. The Department may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any goods or services provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

1.2 Payment Clause. The Contractor will be paid for the services described in the Scope of Work in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work.

1.3 Delay of Payment Due to Contractor's Failure. If the Department in good faith determines that the Contractor has failed to perform or deliver any service or product as required by this Contract, the Contractor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Department may withhold that portion of the Contractor's compensation, which represents payment for service or product that was not performed or delivered.

1.4 Set-Off Against Sums Owed by the Contractor. In the event that the Contractor owes the State any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any other debt subject to the law of set off, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this

provision constitutes proper and timely notice under the law of setoff.

Section 2. Termination.

2.1 Immediate Termination by the Department. The Department may terminate this Contract for any of the following reasons effective immediately without advance notice:

2.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

2.1.2 The Department determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized;

2.1.3 The Contractor fails to comply with confidentiality laws or provisions;

2.1.4 The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP that is materially false, deceptive, incorrect or incomplete.

2.2 Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for the Department to declare the Contractor in default of its obligations under this Contract:

2.2.1 The Contractor fails to perform, to the Department's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor,

2.2.2 The Department determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

2.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract,

2.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or

suspends its business; or the Department reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law,

2.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract, or

2.2.6 The Contractor has engaged in conduct that has or may expose the State or the Department to liability, as determined in the Department's sole discretion,

2.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right,

2.2.8 The Contractor fails to comply with any provision of Iowa Code chapter 8F, or

2.2.9 The Contractor has failed to comply with a material term of any Business Associate Agreement, if included as an Addendum hereto.

2.3 Notice of Default. If there is a default event caused by the Contractor, the Department shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Department's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Department may either:

2.3.1 Immediately terminate the Contract without additional written notice; or,

2.3.2 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

2.4 Termination Upon Notice. Following 30 days' written notice, the Department may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Department up to and including the date of termination.

2.5 Termination Due to Lack of Funds or Change in Law. The Department shall have the right to terminate this Contract without penalty by giving sixty (60) days' written notice to the Contractor as a result of any of the following:

2.5.1 Adequate funds are not appropriated or granted to allow the Department to operate as

required and to fulfill its obligations under this Contract;

2.5.2 Funds are de-appropriated or not allocated or if funds needed by the Department, at the Department's sole discretion, are insufficient for any reason;

2.5.3 The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Department;

2.5.4 The Department's duties are substantially modified.

2.6 Remedies of the Contractor in Event of Termination by the Department. In the event of termination of this Contract for any reason by the Department, the Department shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which the Department is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Department under this Contract in the event of termination. However, the Department shall not be liable for any of the following costs:

2.6.1 The payment of unemployment compensation to the Contractor's employees;

2.6.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

2.6.3 Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

2.6.4 Any taxes that may be owed by the Contractor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

2.7 The Contractor's Termination Duties. The Contractor upon receipt of notice of termination or upon request of the Department, shall:

2.7.1 Cease work under this Contract 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

under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Department may require.

2.7.2 Immediately cease using and return to the Department any personal property or materials, whether tangible or intangible, provided by the Department to the Contractor.

2.7.3 Comply with the Department's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

2.7.4 Cooperate in good faith with the Department, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

2.7.5 Immediately return to the Department any payments made by the Department for services that were not rendered by the Contractor.

Section 3. Confidential Information.

3.1 Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the Department to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Department. 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. 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 the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of the Department at all times.

3.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Department, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be

considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Department. The Contractor may be held civilly or criminally liable for improper disclosure of confidential data.

3.3 Subpoena. 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 the Department and cooperate with the Department in any lawful effort to protect the confidential information.

3.4 Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.

3.5 Survives Termination. The Contractor's obligation under this Contract shall survive termination of this Contract.

Section 4. Indemnification.

4.1 By the Contractor. The Contractor agrees to indemnify and hold harmless the State of Iowa and the Department, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the Department, related to or arising from:

4.1.1 Any breach of this Contract;

4.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;

4.1.3 The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

4.1.4 Any failure by the Contractor to comply with the compliance with the Law provision of this Contract;

4.1.5 Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;

4.1.6 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or

4.1.7 Any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

4.2 Survives Termination. Indemnification obligation of the Contractor shall survive termination of this Contract.

Section 5. Insurance.

5.1 Insurance Requirements. The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor’s expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Contractor’s insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor’s performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Department shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

5.2 Types and Amounts of Insurance Required. Unless otherwise requested by the Department in writing, the Contractor shall cause to be issued the insurance coverages set forth below:

TYPE OF INSURANCE	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 Million
	Product/Completed Operations Aggregate	\$1 Million
	Personal Injury	\$1 Million
	Each Occurrence	\$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million

Excess Liability, Umbrella Form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers Compensation and Employer Liability	As required by Iowa law	As required by Iowa law
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million

5.3 Certificates of Coverage. All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the Department. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Department upon execution of this Contract. The certificates shall be subject to approval by the Department. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days’ prior written notice to the Department. Approval of the insurance certificates by the Department shall not relieve the Contractor of any obligation under this Contract.

Section 6. Project Management & Reporting.

6.1 Project Manager. At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the services being provided under this Contract.

6.2 Review Meetings. During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

6.3 Reports. At the next scheduled meeting after which any party has identified in writing a

problem, the party responsible for resolving the problem 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. For as long as a problem remains unresolved, written reports shall identify:

6.3.1 Any event not within the control of the Contractor or the Department that accounts for the problem;

6.3.2 Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;

6.3.3 Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

6.3.4 Any request or demand for services by one party that another party believes are not included within the terms of this Contract.

6.4 Problem Reporting Omissions. The Department's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

6.5 Change Order Procedure. The Department may at any time request a modification to the Scope of Work using a Change Order. The following procedures for a change order shall be followed:

6.5.1 Written Request. The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.

6.5.2 The Contractor's Response. The Contractor shall submit to the Department a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.

6.5.3 Acceptance of the Contractor Estimate. If the Department accepts the estimate

presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.

6.5.4 Adjustment to Compensation. The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

Section 7. Limitation of Liability.

The Contractor expressly acknowledges that the contracted services and underlying program are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project the Contractor shall not hold the Department liable in any manner for the resulting changes. The Department shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Department's right to terminate the Contract pursuant to the termination provisions.

Section 8. Intellectual Property, Patent & Copyright.

8.1 Rights in Data. The Department shall be and shall remain the owner of all data and records provided to the contractor. The Contractor will not use the Department's data and records for any purpose other than providing services under the contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed to third parties or commercially exploited by or on behalf of the Contractor.

8.2 Ownership of Work Product. The Department shall own all work products developed or furnished in connection with the Contract by the Contractor or any subcontractor (the "Work Product"). The Contractor shall require that all agreements with subcontractors provide for the irrevocable assignment of rights to the Department, without additional consideration of all Work Products of the subcontractors. The Contractor shall give the Department all assistance reasonably requested by

the Department to perfect the Department's ownership of all Work Products, including the execution and delivery of documents assigning title to such Work Product to the Department. All applicable rights to patents, copyrights, trademarks, trade secrets and other property rights in the Work Product shall be the property of the Department. The Department shall grant the Contractor a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the Work Product for the purposes of complying with this Agreement or any relevant provision of state or federal law.

8.3 Publications. Prior to completion of all services required by this Contract, Contractor shall not publish in any format any final or interim report, document, form or other material developed as a result of this Contract without the express written consent of the Department. Upon completion of all services required by this Contract, Contractor may publish or use materials developed as a result of this Contract, subject to confidentiality restrictions, and only after the Department has had an opportunity to review and comment upon the publication. Any such publication shall contain a statement that the work was done pursuant to a contract with the Department and that it does not necessarily reflect the opinions, findings and conclusions of the Department.

Section 9. Warranties.

9.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law. All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

9.2 Concepts, Materials, and Works Produced. Contractor represents and warrants that all the concepts, materials and Works produced, or

provided to the Department pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and Works. The Contractor represents and warrants that the concepts, materials and Works and the Department's use of same and the exercise by the Department of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Contractor and any other materials, Works and methodologies used in connection with providing the services contemplated by this Contract.

9.3 Professional Practices. The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

9.4 Conformity with Contractual Requirements. The Contractor represents and warrants that the Works will appear and operate in conformance with the terms and conditions of this Contract.

9.5 Obligations Owed to Third Parties. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Department will not have any obligations with respect thereto.

9.6 Title to Property. The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the Department is good and that transfer of title or license to the Department is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

9.7 Industry Standards. The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the applicable industry standards in the performance of this Contract.

9.8 Technology Updates. The Contractor represents and warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

Section 10. Contract Administration.

10.1 Independent Contractor. The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the Department or the State of Iowa for federal or state tax purposes. The Department will not withhold taxes on behalf of the Contractor (unless required by law).

10.2 Incorporation of Documents. To the extent this Contract arises out of an RFP, the RFP, RFP amendments and written responses to bidders' questions (collectively RFP) and the Contractor's Proposal submitted in response to the RFP, and this Contract form the Contract between the Contractor and the Department and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.

10.3 Order of Priority. In the event of a conflict between the Contract, the RFP and the Contractor's Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) Proposal.

10.4 Compliance with the Law. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and

accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

10.5 Industry Standards. Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the relevant industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

10.6 Procurement and Subcontracting. Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations. All obligations imposed on Contractor through the terms of this Contract apply to any and all subcontractors and shall be included in all subcontracts.

10.7 Non-Exclusive Rights. This Contract is not exclusive. The Department reserves the right to select other contractors to provide services similar or identical to the Scope of Work described in this Contract during the term of this Contract.

10.8 Non-Supplanting Requirement. To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

10.9 Compliance with Iowa Code ch. 8F. The Contractor shall comply with Iowa Code ch. 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Department.

10.10 Amendments. This Contract may be amended in writing from time to time by mutual

consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties. The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, the same shall be deemed incorporated herein by reference. 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 Contract.

10.11 Third Party Beneficiaries. There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Department and the Contractor.

10.12 Use of Third Parties. The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Department in writing of all subcontracts relating to services to be performed under this contract prior to the time the subcontract(s) become effective. The Department reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Department shall have the right to request the removal of a subcontractor from the Contract for good cause.

10.13 Choice of Law and Forum. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or

Federal court, which may be available to the Department or the State of Iowa.

10.14 Assignment and Delegation. This Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

10.15 Integration. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

10.16 Headings or Captions. The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

10.17 Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

10.18 Joint and Several Liability. If the Contractor 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 Contract, and for any default of activities and obligations.

10.19 Supersedes Former Contracts or Agreements. This Contract supersedes all prior Contracts or Agreements between the Department and the Contractor for the services provided in connection with this Contract.

10.20 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

10.21 Notice. Any and all notices, designations, consents, offers, acceptances or any other

communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth on the Contract Declarations & Execution page(s). Each such notice shall be deemed to have been provided:

10.21.1 At the time it is actually received; or,

10.21.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

10.21.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

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.

10.22 Cumulative Rights. The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

10.23 Severability. If any provision of this Contract 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 Contract.

10.24 Time is of the Essence. Time is of the essence with respect to the performance of the terms of this Contract.

10.25 Authorization. Each party to this Contract represents and warrants to the other parties that:

10.25.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

10.25.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

10.26 Successors in Interest. All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

10.27 Records Retention and Access

10.27.1 The Contractor shall maintain accurate, current, and complete records of the financial activity of this contract, including records that adequately identify the source and application of funds throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. Cash contributions made by the Contractor and third party in-kind (property or service) contributions shall be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.

10.27.2 The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.

10.27.3 The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Department.

10.27.4 The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.

10.27.5 The Contractor shall permit the Department of Human Services, the Auditor of the State of Iowa or any other authorized

representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Department reserves the right to address the board or other managing entity regarding performance and expenditures.

10.27.6 The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

10.28 Audits. Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Department if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Department that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. Contractor shall provide the Department with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The

requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

10.29 Qualifications of Staff. The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Iowa Administrative Code.

10.30 Solicitation. The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

10.31 Obligations Beyond Contract Term. This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the Department and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

10.32 Counterparts. The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

10.33 Delays or Impossibility of Performance. Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court

orders that restrict Contractor's ability to deliver the goods or services contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Department. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of services not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

10.34 Suspensions and Debarment. The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency. The Contractor shall execute the certification regarding debarment, which is attached to this Contract.

10.35 Lobbying Restrictions. The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. § 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements. The Contractor shall execute the certification regarding lobbying restrictions, which is attached to this Contract.

10.36 Tobacco Smoke Prohibited. The Contractor certifies that it and its subcontractors will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The Contractor shall execute the Certification of

Compliance with the Pro-Children Act of 1994, attached to this Contract.

10.37 Conflict of Interest. No relationship exists or will exist during the contract period between the contractor and the Department that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Contract. In the event a conflict of interest is proven to the Department, the Department shall terminate the contract, and the Contractor shall be liable for any excess costs to the Department as a result of contract default. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any related party transaction to the Department. Written approval from the Department shall be required prior to such transaction.

10.38 Drug Free Work Place. The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.

10.39 Certification regarding sales and use tax. By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the Department may declare the contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Department or its representative filing for damages for breach of contract.

10.40 Right to Address the Board of Directors or Other Managing Entity. The Department reserves the right to address the board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Department determines appropriateness.

10.41 Repayment Obligation. In the event that any state and/or federal funds are deferred and/or

disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Department for the full amount of any claim

disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.