

**CONTRACT BETWEEN**  
**IOWA DEPARTMENT OF HUMAN**  
**SERVICES**

**AND**

**Chicago Systems Group, Inc. (CSG)**

**FOR THE**

**IOWA MEDICAID ENTERPRISE**

**HIPAA 5010 and ICD-10 Technical**  
**Assistance and Support Services**

Contract MED-09-017

## 1. Identity of the Parties

The State of Iowa, Department of Human Services, (referred to in this document as “the Agency” or “DHS”) is the issuing agency for this Contract (“the Contract”). The Iowa Medicaid Enterprise (“IME”) is the DHS division responsible for daily operation of the Iowa Medicaid program. The Agency’s address is:

Iowa Department of Human Services  
Hoover State Office Building  
1305 E. Walnut Street  
Des Moines, IA 50319

Chicago Systems Group, Inc. (“CSG”), (referred to in this document as “Contractor”) is the contracting entity and is entering into this Contract to provide the services as defined herein. The address of the Contractor is:

Chicago Systems Group, Inc.  
180 North Stetson Avenue, Suite 3200  
Chicago, IL 60601

## 2. Notices

With the exception of any associated Business Associate Agreement, which may be modified or replaced on notice pursuant to Section 9.2, notices under the Contract shall be in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express or other similar and reliable carrier to the representative of the party to receive notice identified below, at the address as it appears below.

If to Agency: Mary Tavegia  
Contract Administration Office  
Iowa Department of Human Services  
Iowa Medicaid Enterprise  
100 Army Post Road  
Des Moines, Iowa 50315

and

Julie Lovelady, Contract Manager  
Iowa Department of Human Services  
Iowa Medicaid Enterprise  
100 Army Post Road  
Des Moines, Iowa 50315

If to Contractor: Tim Lenning, Executive Vice President  
CSG Government Solutions  
180 North Stetson, Suite 3200  
Chicago, IL 60601

Each notice shall be deemed to have been provided at the time it is actually received, within one (1) day in the case of overnight hand delivery or services such as Federal Express with guaranteed next day delivery, or within five (5) days after it is deposited in the U.S. Mail in the case of registered or certified mail.

From time to time, the parties may change the name and address of a party designated to receive notice. Such changes of the designated person shall be in writing to the other party and as provided herein.

### **3. Incorporation of Documents**

The Request For Proposal (RFP) MED-09-017, and all amendments collectively form the RFP and are hereinafter referred to as the "RFP". The Contractor's Bid Proposal, any amendments and the Contractor's Best and Final Offer, if applicable, collectively form the Bid Proposal and are hereinafter referred to as the "Bid Proposal". The Bid Proposal and the RFP are incorporated herein by reference. The parties are obligated to perform all services and to meet all of the performance standards described in the Contract.

### **4. Order of Priority**

In the event of a conflict between the Contract, the RFP and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order:

1. the Contract;
2. the RFP;
3. the Bid Proposal.

### **5. Scope of Work and Service Requirements**

Service requirements and performance standards applicable to the HIPAA and ICD-10 technical assistance and support contractor, are set forth in Section 3 of RFP MED-09-017 and are incorporated herein by reference.

### **6. Term of the Contract**

The term of the Contract is February 01, 2010, or the date last signed below, whichever is later, through November 30, 2013.

### **7. Payment Terms and Compensation**

#### **7.1. Performance Based Contract.**

Contractor acknowledges that this is a fixed price performance based Contract and that the Contractor is obligated to perform all of the Contractor's Responsibilities and meet all of the Contractor Performance Standards in this Contract. DHS acknowledges that it is responsible for meeting all State Responsibilities in the RFP and this Contract.

The prices for the Base Term of this contract are:

SFY 2010	\$997,371
SFY 2011	\$1,921,524

SFY 2012	\$2,492,701
SFY 2013	\$1,822,328
SFY 2014	\$ 742,370

**7.2. Taxes.**

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Contract deliverables.

**7.3. Invoice and Payment**

- a. The Contractor shall submit an invoice monthly in accordance with this Contract. Each month the Contractor may invoice an amount equal to the state fiscal year value set forth in Section 7.1 divided by the number of Contract months of that state fiscal year.

Example: In SFY 2010, Contractor will provide services for a period of five full months, therefore:

$$\$997,371/5 \text{ months} = \text{maximum monthly invoices for SFY 2010 of } \$199,474.20$$

All invoices shall comply with all applicable rules concerning payment of such claims. Under no circumstances shall the Agency be obligated to pay more than eighty percent (80%) of each invoice submitted in each state fiscal year (July 1 through June 30) until the end of each state fiscal year. At the end of the state fiscal year, the Contractor may invoice the remaining twenty percent (20%). After the Agency validates that all deliverables and work set forth in the Master Work Plan (MWP) defined in RFP Section 3.1.1.9 are current, the Agency will then issue payment for the withheld sums.

If deliverables are not current at the end of any state fiscal year, the Contractor will complete a corrective action plan until such time as the Agency validates the work is current. After the Agency validates that the Contractor has taken corrective action, accepts the work, and confirms that deliverables are current and approved, the Contractor may invoice the Agency. If invoicing takes place more than 60 days after June 30, the Contractor will follow the state Appeal Board process to obtain payment for the expenditures invoiced more than 60 days following the end of a state fiscal year. Payment through the state Appeal Board process is fully at risk and is conditioned on approval of the payment by the Appeal Board.

The Agency shall pay all approved invoices in arrears and in conformance with Iowa Code § 8A.514. The Agency 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 deliverables 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.

**b. Withholding Payments.**

In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Contractor, in whole or in part, without penalty to the Agency or work stoppage by Contractor, in the event the Agency determines that: (1) Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or (2) any deliverable has failed to meet or conform to any applicable specifications or contains or is experiencing a deficiency. No interest shall accrue or be paid to Contractor on any compensation or other amounts withheld or retained by the Agency under this Contract.

If the total amount withheld for failure to perform a requirement or meet a standard under or this Contract is greater than one hundred dollars (\$100.00) for more than three (3) consecutive months during or after the term of the Contract the Contractor shall forfeit five (5%) of the withheld amount to the Agency. The Agency, in its sole discretion, may elect not to impose the 5% forfeiture.

**c. Overpayments to the Contractor**

The Contractor shall pay to the Agency the full amount of any erroneous payment or overpayment to the Contractor by the earlier of thirty (30) days after the Agency's notification or the Contractor's discovery of the erroneous payment or overpayment.

## **8. Termination**

### **8.1. Termination for Cause by the Agency**

The Agency may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- a. Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- b. Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

- c. Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- d. Contractor terminates or suspends its business;
- e. Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- f. Contractor has failed to comply with any applicable international, federal, state or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- g. The Agency determines or believes the Contractor has engaged in conduct that:
  - (a) has or may expose the Agency or the State to material liability, or
  - (b) has caused or may cause a person's life, health or safety to be jeopardized;
- h. The Agency may terminate this Contract if the Agency determines that the Business Associate has breached a material term of the Business Associate obligations contained in this Contract, or, alternatively, the Business Associate is required to provide the Agency with notice of the existence of an alleged material breach;
- i. Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
- j. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- k. Any of the following has been engaged in by or occurred with respect to the Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:
  - Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
  - Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
  - Making an assignment for the benefit of creditors;
  - Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is

reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract

In the event of termination under this Subsection, the Agency shall have the right to procure similar Contract services on the open market. The Contractor shall be liable for the difference between the original Contract price of services and the cost of such services from another bidder, and any other costs directly related to the Contractor's breach such as costs of competitive bidding, mailing, advertising, Agency staff time and attorney's fees. The Contractor shall have thirty (30) days after notice from the Agency of the amount of such costs in which to submit payment unless an additional period of time is agreed to by the parties.

### **8.2. Notice of Default**

If there is a default event caused by the Contractor, the Agency shall provide written notice to the Contractor of the nature of the default. The Contractor shall have thirty (30) days, unless otherwise notified, after such notice to correct the problem(s) that resulted in the default notice. If the default is not corrected to the satisfaction of the Agency within the specified time, the Agency may immediately terminate the contract without additional written notice, or enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

### **8.3. Survives Termination.**

The Contractor's obligations under this section shall survive termination or expiration of this Contract.

### **8.4. Termination Upon Notice.**

Following a thirty (30) day written notice, the Agency may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

### **8.5. Termination Due to Lack of Funds or Change in Law.**

Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Contract in whole or in part without penalty and without any advance notice as a result of any of the following:

- a. The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
- b. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or

- c. If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or
- d. If the Agency's duties, programs or responsibilities are modified or materially altered; or
- e. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract.

The Agency shall provide Contractor with written notice of termination pursuant to this section.

**8.6. Limitation of the State's Payment Obligations.**

In the event of termination of this Contract for any reason by either party, except for termination by the Agency pursuant to Section 8.1, the Agency shall pay only those amounts, if any, due and owing to Contractor hereunder for deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the Agency is obligated to pay pursuant to this Contract; provided however, that in the event the Agency terminates this Contract pursuant to Section 8.5, the Agency's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section 8.6 in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

- a. The payment of unemployment compensation to Contractor's employees;
- b. The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- c. Any costs incurred by 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;
- d. Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract; or
- e. Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**8.7. Contractor's Termination Duties.**

Upon receipt of notice of termination or upon request of the Agency, Contractor shall:

- a. Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within

- fifteen (15) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Agency may require.
- b. Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.
  - c. Cooperate in good faith with the Agency and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
  - d. Immediately return to the Agency any payments made by the Agency for deliverables that were not rendered or provided by Contractor.
  - e. Immediately deliver to the Agency any and all deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied at that time.

**8.8. Contractor's Default Cured by the Agency**

If, in the reasonable judgment of the Agency, a default by the Contractor is not so substantial as to require termination, reasonable efforts to induce the Contractor to cure the default are unsuccessful and the default is capable of being cured by the Agency or another resource without unduly interfering with continued performance by the Contractor, the Agency may:

- a. Provide or procure the service to cure the default, in which event, the Contractor shall reimburse the Agency for the reasonable cost of the service,
- b. Immediately terminate the Contract without additional written notice; or,
- c. Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

**9. Confidential Information.**

**9.1. Agency's Confidential Information Relating to Members**

The Contractor shall treat identifying information relating to Medicaid members that is obtained by it through performance under the Contract as confidential information to the extent that confidential information is protected under state and federal law and under the confidentiality requirements imposed by the Contract. The Contractor shall not use any confidential information in any manner except as necessary for the proper discharge of its obligation under the Contract. Identifying information shall include but not be limited to name, identifying number, symbol, or other identification particularly assigned to the member.

The Contractor shall immediately report to the Agency any unauthorized disclosure of confidential information. The Contractor shall be liable for any breach of this Subsection by its principals, officers, employees, agents or subcontractors and shall indemnify,

defend, and hold harmless the Agency from any and all liability resulting from such violation.

The Contractor shall provide to the Agency 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 provisions of this Subsection shall survive the termination or expiration of the Contract.

### **9.2. Business Associate Agreement**

The Contractor performs certain services on behalf of or for the Agency pursuant to this Contract that require the exchange of information that is protected by the Health Insurance Portability and Accountability Act of 1996. The Contractor, acting as the Agency's Business Associate, agrees to be bound by and comply with the Business Associate Agreement Addendum (BAA), and any amendments thereof, as posted to the Agency's website:

<http://www.dhs.state.ia.us/Consumers/Health/HIPAA/Home.html>

The Business Associate Agreement Addendum is incorporated herein by reference.

**Notice:** By signing this Contract, the Contractor consents to receive notice of future amendments to the BAA through electronic mail. The Contractor shall file and maintain a current electronic mail address with the Agency for this purpose. The Agency may amend the BAA by posting an updated version of the BAA on the Agency's website at: <http://www.dhs.state.ia.us/Consumers/Health/HIPAA/Home.html> and providing the Business Associate electronic notice of the amended BAA. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the Agency of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days of the Agency's notice referenced herein. Any agreed alteration of the then current Agency BAA shall have no force or effect until the agreed alteration is reduced to a Contract amendment that must be signed by the Contractor, Agency Director, and the Agency Security and Privacy Officer.

### **9.3. Contractor's Confidential or Proprietary Information**

The Contractor is urged not to bring confidential or proprietary information to the IME facility. If the Contractor does bring such information to the facility, the Contractor shall be the custodian of the information and shall establish its own procedures to protect the confidentiality of the information. Confidential and proprietary information shall be prominently identified. If during performance of the Contract the Agency obtains information of the Contractor properly marked confidential or proprietary, the information shall be treated as confidential to the extent such information is determined confidential under Iowa Code Chapter 22 or other provision of law by a court of competent jurisdiction. In the event the Agency receives a public request for such information, written notice shall be given to the Contractor seventy-two (72) hours prior

to the release of the information to allow the Contractor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.

**9.4. Use of Name or Intellectual Property**

Contractor agrees it will not use the Agency and/or State's name or any of their intellectual property, including but not limited to, any State, state Agency, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Agency and/or the State.

**9.5. No Dissemination of Confidential information.**

No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by the Contractor except as authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. Any data supplied by the Agency to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Agency. 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 Agency or the conclusion of the Contract (whichever occurs first). The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Agency 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 Agency. 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 information shall remain the property of the Agency at all times

**9.6. 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 Agency and cooperate with the Agency in any lawful effort to protect the confidential information.

**9.7. Reporting of Unauthorized Disclosure.**

The Contractor shall immediately report to the Agency any unauthorized disclosure of confidential information.

### **9.8. Qualified Service Organization.**

Contractor may review data that is protected by 42 C.F.R. part 2 and will, therefore, be a "qualified service organization" as that term is defined in 42 C.F.R. § 2.11. Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the Agency, Contractor is fully bound by 42 C.F.R. part 2 and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the regulations.

## **10. Change of Service**

### **10.1. Change Service Requests**

The Agency reserves the right to request from time to time changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract.

If the Agency requests or directs the Contractor to perform any service or function that is consistent with and similar to the scope of services required to be performed by the Contractor under this Contract, the Contractor will proceed to make the change and will receive no additional compensation.

If the Agency requests or directs the Contractor to perform any service or function that is a new service or function inconsistent with or dissimilar from the services required to be performed by the Contractor under the Contract, the Contractor will follow the procedure defined below.

If the Agency requests or directs the Contractor to perform any service or function which the Contractor reasonably and in good faith believes is not included within the scope of services set forth in the Contract, then prior to performing such service or function, the Contractor shall promptly notify the Agency in writing that it considers the service or function to be an "Additional Service" for which the Contractor should receive a Change Service Request. If the Contractor does not notify the Agency, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing the service or function.

### **10.2. Procedure**

The Agency shall submit a Change Service Request to the Contractor, which shall include a detailed description of the requested service, the priority of the service, a date the service is needed, and a date for submission of a proposal by the Contractor. In its proposal, the Contractor shall describe the procedure and schedule to be employed for the requested service and identify the number of hours necessary to complete the service by labor category and the associated cost to implement the change request. If necessary, the Contractor and the Agency shall meet to discuss and clarify any issues related to the requested service. Upon written approval by the Agency, the Contractor shall perform the requested service and receive payment according to the terms agreed to by the parties and based upon the rate specified in the Contractor's cost proposal.

If the Agency does not accept the Contractor's proposal, the Agency may withdraw or modify its Change Service Request. If the Agency modifies its Change Service Request, the procedures set forth above shall apply.

### **10.3. No Agreement on Change Service Request**

If the parties are unable to reach an agreement in writing within fifteen (15) days of receipt of the Contractor's proposal or modified proposal, the Contract Administration Office shall make a determination of the compensation, procedure or schedule, and the Contractor shall proceed according to procedures set forth in the Contract Disputes Section.

## **11. Assessment of Damages**

The Agency will notify the Contractor in writing of the proposed assessment of actual or liquidated damages. If the Contractor disputes the assessment, it must challenge the assessment in writing pursuant to the Contract Disputes Section.

## **12. Insurance**

### **12.1. Coverage Requirements**

The Contractor shall maintain in effect, with an authorized insurer, at its own expense, the following types and amounts of insurance covering its work:

- a. Commercial general liability insurance (including premises/operations liability, contractors liability, contractual liability, products liability, completed operations liability, broad form property damage liability, personal injury liability, and extended bodily injury and death coverage) in a minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit for bodily injury or death, personal injury or property damage
- b. Automobile liability insurance (including any auto, hired autos and non-owned autos) in a minimum amount of \$1,000,000.
- c. Professional liability insurance covering the liability of the Contractor for any and all errors or omissions committed by the Contractor, its subcontractors, agents, and employees, in the performance of the Contract in a minimum amount of \$1,000,000 per occurrence.
- d. Umbrella liability insurance in a minimum amount of \$2,000,000.
- e. Workers' compensation insurance covering the Contractor's employees as required by Iowa law.

### **12.2. Coverage**

All insurance policies required by the Contract shall 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 Contractor's insurance shall insure against any loss or damage resulting from work performed under the Contract. All insurance policies shall remain in full force and effect

for the entire term of the Contract. Each policy shall name the State of Iowa and the Agency as an additional insured or loss payee, as applicable. The Contractor and any subcontractor performing work under the Contract shall provide certificates of the required insurance to the Agency at the time of execution of the Contract or at a time mutually agreeable to the parties. The certificates shall be subject to approval by the Agency. Acceptance of the certificates shall not relieve the Contractor of any obligation under the Contract.

The Contractor shall obtain a waiver of any subrogation rights the insurance carrier may have against the Agency or the State of Iowa and the waiver shall be indicated on the certificate of coverage.

### **12.3. Subcontractors**

The Contractor shall require any subcontractor to purchase and maintain similar policies of insurance as described in this Subsection.

### **12.4. Notice of Cancellation**

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 Agency.

## **13. Performance Bond**

### **13.1. Assessment Phase**

The Contractor shall post a performance bond or an irrevocable letter of credit acceptable to the Agency in an amount equal to \$219,106. The surety shall be in force from the signing of the contract until April 30, 2010. The performance bond or irrevocable letter of credit shall be delivered to the Agency within thirty (30) days of signing the contract.

### **13.2. Implementation Phase**

The Contractor shall post another performance bond or an irrevocable letter of credit acceptable to the Agency for the Implementation Phase. For purposes of this performance bond the implementation phase includes price of all subsequent work not included in the assessment phase. The amount shall be based on a declining graduated formula adjusted and posted with the Agency on an annual basis, per the following table.

Begin Date	End Date	Amount
5/1/2010	6/30/2011	\$361,366
7/1/2011	6/30/2012	\$252,870
7/1/2012	6/30/2013	\$128,235
7/1/2013	11/30/2013	\$37,119

The surety shall be in force from the beginning of the Implementation Phase until the Contract is terminated or expires and shall be delivered to the Agency at the beginning of the Implementation Phase.

A surety authorized to do business in Iowa that is acceptable to the Agency shall issue the performance bond or irrevocable letter of credit. The performance bond or irrevocable letter of credit shall provide funds to the Agency for any liability, loss, damage, or expense as a result of the Contractor's failure to perform fully and completely all requirements of the Contract. Such requirements include the Contractor's obligation to indemnify the Agency under circumstances described in the Contract, and the Contractor's obligation to perform the services required by the Contract throughout the entire term of the Contract.

## **14. Indemnification**

### **14.1. General Indemnification**

The Contractor shall defend, indemnify and hold harmless the State of Iowa, the Agency, its employees and agents from any and all liabilities, damages, settlements, penalties, judgments, fines and claims, and all related costs and expenses, including expert fees, reasonable value of time incurred by the Attorney General's office, and the cost and expenses and reasonable attorney's fees of other counsel required to defend the State of Iowa or Agency, related to or arising from:

- a. any breach of this Contract; or
- b. any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor; or
- c. any failure by the Contractor to comply with the Compliance with the Law provision of this Contract; or
- d. any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- e. any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

### **14.2. Indemnification Duration**

The indemnification obligation of the Contractor shall survive the termination of this Contract.

### **14.3. Patent/Copyright Infringement Indemnification**

The Contractor shall defend, indemnify and hold harmless the State of Iowa, the Agency, its employees and agents from any and all liabilities, damages, settlements, penalties, judgments, fines and claims, and all related costs and expenses, including reasonable attorney's fees of the Attorney General's office, and the reasonable attorney's fees of other counsel required to defend the Agency, incurred in connection with any action or proceeding based on a claim that any piece of equipment, software, commodity, or service infringes any United States or foreign patent, copyright, trademark, trade secret supplied or used by the Contractor or any subcontractor to perform this Contract, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service, or

other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or operation thereof, become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense and at the Agency's sole discretion:

- a. Procure for the Agency the right to continue using the equipment, software, commodity, or service, or, if such option is not reasonably available to the Contractor,
- b. Replace or modify the same with equipment, software, commodity, or service of equivalent function and performance so that it no longer infringes, or, if such option is not reasonably available to the Contractor,
- c. Accept its return by the Agency with appropriate credits to the Agency against the Contractor's charges and reimburse the Agency for any losses or costs incurred as a consequence of the Agency ceasing its use and returning it.

The above remedies shall be in addition to and not exclusive of other remedies provided by this agreement or by law. The provisions of this Subsection shall survive the termination or expiration of the Contract.

## **15. Operating Systems and Software Applications**

### **15.1. Software and Ownership**

The State and the United States Department of Health and Human Services shall have all rights required by 45 CFR § 95.617.

### **15.2. Operating Systems, Applications Software and Utilities**

Any operating systems and utilities, i.e., compilers utilities, case tools, database managers and other applications enabling software, and any applications software and associated documentation, and utilities used by the Contractor to provide services to the Agency under the Contract, but not used exclusively to provide services to the Agency shall be:

- a. Readily commercially available software used without modification by the Contractor.
- b. Readily commercially available software used with modification owned by the Contractor, which the Contractor agrees to deliver the source code and updated and current documentation, including but not limited to JCL, work flow, product process, applications, and interfaces upon final acceptance and any updates thereto upon termination and to grant to the Agency or its designee at no charge a perpetual, irrevocable, fully paid up license to use, reproduce, duplicate and modify the modifications and associated documentation for the sole benefit of the Agency.
- c. Proprietary software that the Contractor has the right to license to the Agency and in which the Contractor agrees to deliver the source code and updated and current documentation, including but not limited to JCL, work flow, product process, applications, and interfaces upon final

acceptance and any updates thereto upon termination and to grant to the Agency or its designee at no charge a perpetual, irrevocable, fully paid-up license to use, reproduce, duplicate and modify such software and associated documentation for the sole benefit of the Agency. If the Contractor procures under the Contract a license for operating systems software or utilities to be used solely to perform services for the Agency, the Contractor agrees to obtain such license in the name of the Agency, if the Agency is permitted to grant the Contractor the right to use such software solely to provide services to the Agency during the term of the Contract. In such event, the Agency agrees to grant to the Contractor, at no charge during the term of the Contract, subject to customary confidentiality and other license terms and conditions, the right to use such software solely to provide services to the Agency. The license shall include, but not be limited to:

- (i) All primary systems and support systems;
- (ii) All other system instructions for operating systems developed, designed or installed under the Contract;
- (iii) All data files;
- (iv) All user and operational manuals and other documentation;
- (v) Training programs for the Agency or the Agency's agents and employees;
- (vi) All performance-enhancing operational plans and products; and
- (vii) All specialized or specially modified software and specially developed programs, including utilities, software and documentation that are required for or used in the generation of systems whether obtained, developed or modified in the course of performance of the Contract or before it. This obligation is not subject to limitation in any respect, regardless of whether any part of the system or software is characterized as proprietary or as not paid for under the Contract.

### **15.3. Third Party Software**

If the Contractor is using another party's software, upon final acceptance, the Contractor shall grant the Agency a non-exclusive, perpetual license to use the third party software and its updated documentation for the Agency's internal business purposes. The licenses will continue until the Agency permanently discontinues the use of the third party software. The terms in any license for third party software shall be consistent with the requirements of this Subsection. In the event of a conflict between the terms of any such license and this Contract, this Contract shall take precedence and supersede such license terms.

Prior to utilizing any third party software product that may be included as part of a software deliverable to the Agency, the Contractor shall provide to the Agency copies of the license agreement from the licensor of the third party software to allow the Agency to

pre-approve the license agreement which must, at a minimum, provide the Agency with necessary rights consistent with the IME requirements.

#### **16. Equipment & Software Installation and Operation**

Installation for all equipment, software, applications and interfaces will occur as described in the Master Work Plan. Any installations done by the Contractor or its designated agent shall be conducted by experienced and trained staff and shall not invalidate or void any manufacturers' warranties. Installations shall not interfere with the execution of any other software component, application or interface.

The Contractor shall conduct its installation services so as to minimize interference with normal activities of the Agency and shall keep the site safe and clean at all times. The Contractor will restore the site to a condition no less finished than prior to the initiation of the installation. Upon completion of installation Contractor will leave the site clean and free from all materials, tools and equipment not required after installation. The Contractor will be responsible for safety conditions in the areas of work performance that it controls.

The Contractor shall have access to the system, in whole and in part, to provide services under the Contract, subject to the security regulations existing at the site and regulations that may be required because of the nature of the system.

The Contractor shall continuously protect the system from damage, destruction, or loss caused by the acts or omissions of its staff, and shall protect the Agency's real and personal property from damage arising from the acts or omissions of its staff in connection with installation and operation of the system. The Contractor shall be responsible for any loss, destruction, or damage to the Agency's property, which results from or is caused by the Contractor's acts or omissions.

The Contractor shall deliver to the Agency and maintain and replace documentation as described in the individual RFP component sections. This will include, as applicable, system documentation, user documentation, software development documentation and disaster recovery and back-up planning documentation. The documentation shall be provided in electronic and hardcopy form.

#### **17. Warranties**

Warranties made by the Contractor in this Contract, whether: (a) this Contract specifically denominates the Contractor's promise as a warranty; or (b) the warranty is created by the Contractor's affirmation or promise, by a description of the deliverables to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that 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 deliverables provided by the Contractor. The provisions of this section apply during the term of this Contract and any extensions or renewals thereof

### **17.1. System Warranty**

The Contractor represents and warrants that the system and software delivered under the Contract shall be free from defect and capable of performing the Contract services when operated by the Agency. The Contractor agrees to correct errors discovered in the design and installation of the software not due to the fault or negligence of the Agency. Any enhancement or other changes that may be undertaken during the performance of the Contract will be covered by this warranty. The Contractor represents and warrants that no "anti-use" devices have been or will be installed in the software. The "anti-use" warranty shall survive termination of the Contract.

### **17.2. Contractor represents and warrants that the deliverables (in whole and in part) shall:**

- a. Be free from material deficiencies; and
- b. Meet, conform to and operate in accordance with all specifications and in accordance with this Contract during the Warranty Period. During the Warranty Period Contractor shall, at its expense, repair, correct or replace any deliverable that contains or experiences material deficiencies or fails to meet, conform to or operate in accordance with specifications within five (5) business days of receiving notice of such deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event Contractor is unable to repair, correct or replace such deliverable to the Agency's satisfaction, Contractor shall refund the fees or other amounts paid for the deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the deliverables, to inform the Agency promptly of any known deficiencies in any deliverables, repair and correct any deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such deliverable may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected deliverable.

### **17.3. Professional and Workmanlike Manner.**

Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the

services as warranted, Contractor shall reimburse the Agency any fees or compensation paid to Contractor for the unsatisfactory services.

**17.4. Compliance with the Law Warranty.**

Contractor represents and warrants that the deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

**17.5. 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 Agency will not have any obligations with respect thereto.

**17.6. Intellectual Property Rights Warranty**

Contractor represents and warrants that:

- a. All deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party;
- b. Contractor has not previously and will not grant any rights in any deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and
- c. The Agency shall peacefully and quietly have, hold, possess, use and enjoy the deliverables without suit, disruption or interruption.
- d. The deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such deliverables); and the Agency's use of, and exercise of any rights with respect to, the deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the deliverables. Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is

likely to arise, then Contractor shall, at the Agency's request and at the Contractor's sole expense:

1. Procure for the Agency the right or license to continue to use the deliverable at issue;
2. Replace such deliverable with a functionally equivalent or superior deliverable free of any such infringement, violation or misappropriation;
3. Modify or replace the affected portion of the deliverable with a functionally equivalent or superior deliverable free of any such infringement, violation or misappropriation; or
4. Accept the return of the deliverable at issue and refund to the Agency all fees, charges and any other amounts paid by the Agency with respect to such deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

#### **17.7. Intellectual Property.**

- a. **Ownership and Assignment of Other Deliverables.** Contractor agrees that the State and Agency shall become the sole and exclusive owners of all deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the deliverables and shall not use any deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by Agency, upon completion or termination of this Contract, Contractor will immediately turn over to Agency all deliverables not previously delivered to Agency, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Agency.
- b. **Waiver.** To the extent any of Contractor's rights in any deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and

unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the deliverables.

- c. **Further Assurances.** At the Agency's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect or protect the State's rights in and to the deliverables and to carry out the assignments, transfers and conveyances set forth in Section 17.7(a).
- d. **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 Agency. 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 Agency 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 Agency and that it does not necessarily reflect the opinions, findings and conclusions of the Agency.

#### **17.8. Authorization.**

Contractor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Contract and 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.

#### **17.9. Millennium and Leap Year Warranty**

The Contractor represents and warrants that any systems hardware and software which is developed and delivered under the Contract shall accurately process date data, including, but not limited to, calculating, comparing and sequencing from, into between, and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the documentation provided by the Contractor.

#### **17.10. Compatibility Warranty**

The Contractor represents and warrants that the system and software which is purchased or developed and delivered under the Contract shall perform as a system with hardware or software currently owned or used by the Agency, and the system and software shall, at a minimum, process, transfer, sequence data, or otherwise interact with the other components or parts of the Agency's system to exchange accurate data.

#### **17.11. Remedies**

The remedies available to the Agency for a breach of warranty under this section. include repair or replacement of non-compliant software at no to cost the Agency and any other remedies available to the Agency under the Contract.

## **18. Liabilities**

### **18.1. Other Agency Contractors**

The Contractor acknowledges and agrees that the Agency shall not be responsible for or liable to the Contractor or its subcontractor(s) for any damages that may be suffered by the Contractor as a result of any act or omission of any other contractor of the Agency. The Agency will subrogate its right to pursue an action against the third party contractor to the Contractor so that the Contractor may pursue a remedy from the third party contractor whose act or omission harmed the Contractor or its subcontractors.

### **18.2. Legislative Changes**

The Contractor expressly acknowledges that this Contract is subject to state legislative change or by changes imposed by the federal government. Should either enact or promulgate measures that alter the HIPAA and ICD-10 Technical Assistance and Support project, the Contractor shall not hold the Agency liable in any manner for the resulting changes. The Agency shall use best efforts to provide thirty (30) days' written notice to the Contractor of any such 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 Agency's right to terminate the Contract pursuant to the termination provisions of the Contract.

## **19. Project Management**

### **19.1. Meetings with the Agency**

Key staff of the Contractor and any subcontractor responsible for the administration of the Contract shall be accessible to Agency staff and shall meet with Agency staff and staff of other contractors as requested. Agency staff shall be available to the Contractor during normal business hours.

### **19.2. Contract Compliance and Monitoring**

The Contractor and any subcontractor shall meet with the Agency and provide information as requested to review the Contractor's compliance with the terms of the Contract and level of performance. The Agency or the Agency's duly authorized and identified agents or representatives of the state and federal governments shall have the right to access any and all information pertaining to the Contract wherever the information is located and is not limited only to locations at which the Contractor is performing services under the Contract. In addition, the Agency may conduct site visits, conduct quality control reviews, review Contract compliance, assess management controls, assess the Contract services and activities, and provide technical assistance. The Agency agrees to reasonable security and confidentiality requirements of the Contractor that are consistent with any security and confidentiality requirements under the Contract.

### **19.3. Records Retention and Access.**

The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency 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. The Contractor shall permit the Agency, the Auditor of the State 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 Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

- a. Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must 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.
- b. 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.
- c. 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 Agency.
- d. The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.
- e. 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 § 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

## **20. Audits.**

Local governments and non-profit sub-recipient 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." If Contractor is obligated by law to have such an audit conducted, a copy of the final audit report shall be submitted to the Agency 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 Agency. If an audit report is not required to be submitted per the criteria above, the sub-recipient must provide written notification to the Agency 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 Agency. See A-133 Section 21 for a discussion of sub-recipient versus vendor relationships. Contractor shall provide the Agency 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.

### **21. Assignment of Intellectual Property Rights.**

Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the deliverables and shall not use any deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by Agency, upon completion or termination of this Contract, Contractor will immediately turn over to Agency all deliverables not previously delivered to Agency, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Agency.

### **22. General Provisions**

**22.1.** To the extent any of Contractor's rights in any deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the deliverables.

**22.2.** At the Agency's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect or protect the State's rights in and to the deliverables and to carry out the assignments, transfers and conveyances set forth in Section 17.7.

**22.3.** Notwithstanding anything to the contrary in this Subsection, the Contractor shall be free to use and employ its general skills, know-how and expertise and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills

gained or learned during the course of performing services under the Contract, so long as it acquires and applies such information without disclosure of any confidential or proprietary information of the Agency and without any authorized use or disclosure of work product developed in connection with the Contract.

#### **22.4. Status of Contractor**

- a. **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 or any Agency, division or Agency of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Agency or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Agency will not withhold taxes on behalf of the Contractor (unless required by law).
  
- b. **Subcontracts** Contractor must secure from the Agency prior written approval for any subcontract entered into by the Contractor for requirements of the Contract. A subcontract shall not affect payment by the Agency to the Contractor or the distribution of payments. All subcontracts shall be in writing and copies shall be provided to the Agency upon request. The terms and conditions imposed on the Contractor under the Contract shall also apply to any subcontractor and shall be incorporated into any subcontract. The Contractor shall be responsible for all work performed under the Contract, whether or not subcontractors are used. A subcontract shall not relieve the Contractor of any responsibility for performance under the Contract.

The Contractor shall notify the Agency of any planned use of subcontractors. This notice shall include, at a minimum, the name and address of each subcontractor, the scope of work to be performed by each subcontractor, the subcontractor's qualifications and the estimated dollar amount of each subcontract. Collectively, subcontractors are not to perform more than 40% of the work contracted by the prime contractor. A representative of a subcontractor may be required to meet regularly with the Agency. If during the course of the subcontract period the Contractor or subcontractor wishes to change or revise the subcontract, prior written approval from the Agency shall be required. The Agency shall respond to any request for approval or consent in a timely manner. The Agency shall have the right to request the removal of a subcontractor for good cause.

#### **22.5. Assignment and Delegation.**

Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as

collateral, grant a security interest in, create a lien against, or otherwise encumber, any payments that may or will be made to the Contractor under this Contract.

**22.6. 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 providing deliverables 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. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 Iowa Administrative Code chapter 4.

**22.7. Procurement.**

To the extent the Contractor is required to by state or federal law, Contractor shall use procurement procedures that comply with all applicable federal, state laws.

**22.8. Non-Exclusive Rights.**

This Contract is not exclusive. The Agency reserves the right to select other contractors to provide deliverables similar or identical to those described in the scope of work during the term of this Contract.

**22.9. Amendments.**

With the exception of any associated Business Associate Agreement, which may be modified or replaced on notice pursuant to Section 9.2 of this Contract, this Contract may only be amended by mutual written consent of the parties. No Contract amendment shall have any force or effect unless the amendment is drafted by the Contract Administration Office, and all such amendments shall be executed on a form approved by the Contract Administration Office that expressly states the intent of the parties to amend this Contract. The Contract may not be amended by any form of letter agreement or language included on invoices or any other transactional documents.

**22.10. 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.

**22.11. Third Party Beneficiaries.**

There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.

**22.12. 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 conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely 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 Agency or the State of Iowa.

**22.13. Immunity from Liability.**

Every person who is a party to the Contract is hereby notified and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract

**22.14. Public Records.**

The laws of the State require procurement records to be made public unless otherwise provided by law.

**22.15. Knowledge of the Iowa Medicaid Program**

The Contractor shall be knowledgeable in all aspects of the operations of the Iowa Medicaid program and applicable federal and state laws, regulations, rules and policies, including without limitation those relating to state and federal reporting and proposed changes to any of the aforesaid being considered at the State or federal level. The Contractor acknowledges that the Agency relies on the Contractor's knowledge of Medicaid.

**22.16. Supersedes Former Contracts or Agreements.**

This Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the deliverables to be provided in connection with this Contract.

**22.17. 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.

**22.18. 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 Agency may declare the Contract void if this certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

**22.19. Right to Address the Board of Directors or Other Managing Entity.**

The Agency reserves the right to address the Contractor’s board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Agency determines appropriateness.

**22.20. 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 Agency 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.

**22.21. Cumulative Rights**

The various rights powers, options, elections, and remedies of either party provided in the Contract shall be construed as cumulative and not exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, or shall in any way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

**22.22. Headings or Captions**

The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.

**22.23. Integration**

The Contract represents the entire Contract between the parties, and neither party is relying on any representation that may have been made which is not included in the Contract.

**22.24. Delays or Impossibility of Performance Based on Force Majeure**

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 deliverables 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 Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which 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.

#### **22.25. Conflict of Interest.**

Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Agency 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 chapter 68B shall apply to this Contract. If a conflict of interest is proven to the Agency, the Agency may terminate this Contract, and the Contractor shall be liable for any excess costs to the Agency as a result of the conflict of interest. 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 potential, real, or apparent conflict of interest to the Agency.

#### **22.26. 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.

#### **22.27. Obligations Beyond Contract Term**

The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All continuing obligations of the Agency and Contractor incurred or existing under the Contract as of the date of termination or cancellation shall survive the termination or cancellation.

#### **22.28. Severability**

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

**22.29. Solicitation**

The Contractor represents warrants that no person or selling agency has been employed or retained to solicit and secure the Contract for commission, percentage or contingency excepting bona fide employees or selling agents retained for the purpose of securing business.

**22.30. Time is of the Essence**

Time is of the essence with respect to the Contractor's performance of the terms of this Contract. Contractor shall ensure that all personnel providing deliverables to the Agency are responsive to the Agency's requirements and requests in all respects.

**22.31. Utilization of Minority Business Enterprises**

The Contractor acknowledges it is the policy of the State of Iowa that minority business enterprises shall have the maximum, practicable opportunity to participate in the performance of state contracts. Where feasible or applicable under the Contract, the Contractor agrees to make a reasonable effort to subcontract with minority business enterprises.

**22.32. Utilization of Small Business**

The Contractor acknowledges it is the policy of the State of Iowa that a fair portion of its purchases and contractors for supplies and services be placed with small businesses. Where feasible or applicable under the Contract, the Contractor agrees to make a reasonable effort to subcontract with small businesses.

**22.33. Waiver**

Except as specifically provided in a waiver signed by the Agency 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 with respect thereto.

**22.34. Certification of Compliance with Pro-Children Act of 1994**

Contractor must comply with Public Law 103-227, Part C Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the Deliverables are funded by federal programs either directly or through State or local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees, and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed.

The Contractor further agrees that the above language will be included in any subawards that contain provisions for children's services and that all subgrantees shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1000 per day.

**22.35. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions**

By signing this Contract, the Contractor is providing the certification set out below:

- a. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- b. The Contractor shall provide immediate written notice to the person to whom this document is submitted if at any time the Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- c. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this document is submitted for assistance in obtaining a copy of those regulations.
- d. The Contractor agrees by submitting this document that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Agency or agency with which this transaction originated.
- e. The Contractor further agrees by submitting this document that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- f. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of

Parties Excluded from Federal Procurement and Nonprocurement Programs.

- g. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- h. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the Agency or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

  - (i) The Contractor certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  - (ii) Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this document.

#### **22.36. Certification Regarding Lobbying**

Contractor certifies as follows:

- a. No federal appropriated funds have been paid or will be paid on behalf of the sub-grantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, an officer or employee of the Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.A. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **22.37. Certification Regarding Drug Free Workplace**

- a.** Requirements for Contractors Who are Not Individuals. If Contractor is not an individual, by signing below Contractor agrees to provide a drug-free workplace by:
- (i) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
  - (ii) establishing a drug-free awareness program to inform employees about:
    - a. the dangers of drug abuse in the workplace;
    - b. the person's policy of maintaining a drug-free workplace;
    - c. any available drug counseling, rehabilitation, and employee assistance programs; and
    - d. the penalties that may be imposed upon employees for drug abuse violations;
  - (iii) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by subparagraph (a);
  - (iv) notifying the employee in the statement required by subparagraph (a), that as a condition of employment on such contract, the employee will:
    - a. abide by the terms of the statement; and
    - b. notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
  - (v) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;
  - (vi) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by 41 U.S.C. § 703; and
  - (vii) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (i), (ii), (iii), (iv), (v), and (vi).
- b.** Requirement for individuals. If Contractor is an individual, by signing below Contractor agrees to not engage in the unlawful manufacture,

- distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.
- c. Notification Requirement. Contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to 41 U.S.C. § 701(a)(1)(D)(ii) or 41 U.S.C. § 702(a)(1)(D)(ii):
- (i) take appropriate personnel action against such employee up to and including termination; or
  - (ii) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

### **22.38. Contract Disputes**

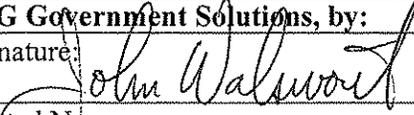
Except as provided herein, the Contract is not subject to arbitration. The Contract Administration Office will decide any dispute concerning performance of this Contract and put that decision in writing and serve a copy on the Contractor. The Contract Administrative Office's decision will be final unless within ten (10) days of the mailing of the decision the Contractor files with the Director of the Agency a written request to review the decision, which identifies all issues being disputed. The Director, or his designee, who may be the Medicaid Director, shall review the Contractor's request to review the Contract Administration Office's decision and issue a written decision within ten (10) days of receipt of the review request. The decision of the Director shall be final for purposes of Iowa Code Chapter 17A. Pending final determination of any dispute, the Contractor will proceed diligently with the performance of this Contract and in accordance with the Contract Administration Office's direction. The Contractor's failure to follow the procedure set out above will be deemed waiver of the Contractor's claim.

### **22.39. Contingency**

The Contract is subject to review and approval by CMS. The Agency shall have the right to modify the Contract at any time to comply with CMS requirements.

**22.40. Execution**

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

<b>CSG Government Solutions, by:</b>	<b>Iowa Department of Human Services, by:</b>
Signature: 	Signature: 
Printed Name: John Walsworth	Printed Name: Charles J. Krogmeier
Title: President	Title: DIRECTOR
Date: 02/15/2010	Date: 2/23/10
Federal Tax ID No.: 364150867	