

Iowa Department of Human Services  
REQUEST FOR PROPOSAL (RFP)

Independent Verification and Validation Services  
For the  
Iowa Medicaid Management  
Information System (MMIS) Project

MED-12-017

Joanne Rockey  
Iowa Medicaid Enterprise  
100 Army Post Road  
Des Moines, Iowa 50315  
Phone: 515-256-4656  
jrockey@dhs.state.ia.us

## **RFP Purpose**

Through this Request for Proposal (RFP) the Iowa Department of Human Services (Agency) seeks to retain the services of a Contractor to provide independent, objective, verification and validation services for the large complex implementation project of procuring new Medicaid Management Information System (MMIS) and Pharmacy Point of Sale (POS) systems for the Iowa Medicaid Enterprise (IME) and transitioning these systems and the operational services sought under RFP MED-12-001 into the IME environment. Because of the complex nature of the MMIS replacement project the Agency is seeking to improve the success of the MMIS implementation through the acquisition of this set of services.

All vendors should become familiar with the other sets of services the Agency is procuring through multiple requests for proposal to manage and ensure success of this project. Specifically the RFPs are Quality Assurance and Quality Control Services (QA/QC) for the MMIS Implementation Project MED-12-014, Project Oversight, Management and Integration Services for the MMIS Implementation Project MED-12-013, and Project Director Services for the MMIS Implementation Project MED-12-018.

## **Bidder Eligibility Requirements**

Because of potential conflicts of interest, no bidders winning:

- System Services MED-12-001,
- Integrated Eligibility Project ACFS-11-134,
- or a contractor who holds one of the IME Professional Services contracts (MED-10-001 or MED-10-013) may bid on this RFP.

Likewise the bidder winning the contract resulting from this award may not be the same bidder that is awarded a contract for any of the following:

- Project Oversight, Management and Integration Services for the MMIS Implementation Project MED-12-013,
- Quality Assurance Services for the MMIS Implementation Project MED-12-014,
- Project Director Services for the MMIS Implementation Project MED-12-018.
- Project Director Services for the Iowa Integrated Eligibility Project (IIEP) Implementation ACFS-12-253.

### Tiebreaker

If a successful bidder under this RFP is the successful bidder under MED-12-013, MED-12-014 or MED-12-018, the bidder will be awarded the highest value contract (base years only). The Agency may then go to the second highest bidder to award the second contract.

For a brief summary on these requests for proposal see Attachment G.

## **Duration of Contract**

The Agency anticipates executing a contract that will have an initial three year contract term with the ability to extend the contract for three additional one year terms. The Agency will have the sole discretion to extend the contract.

**Procurement Timetable**

There are no exceptions to any deadlines for the bidder; however, the Agency reserves the right to change the dates. Times provided are in Central Time.

<b>Event</b>	<b>Date</b>
Agency Issues RFP Notice to Targeted Small Business Website (48 hours):	<b>September 26, 2011</b>
Agency Issues RFP to Bid Opportunities Website	<b>September 29, 2011</b>
Bidders' Conference Will Be Held on the Following Date and Time (Conference Call)	<b>October 13, 2011 10:00 a.m.</b>
Bidder Letter of Intent to Bid and Written Questions Due By	<b>October 18, 2011 3:00 p.m.</b>
Agency Responses to Questions Issued By	<b>October 25, 2011</b>
<b>Bidder Proposals and any Amendments to Proposals Due By</b>	<b>November 7, 2011 3:00 p.m.</b>
Oral Presentations	<b>November 14 - 18, 2011</b>
Agency Announces Apparent Successful Bidder/Notice of Intent to Award	<b>November 30, 2011</b>
Contract Negotiations and Execution of the Contract Completed	<b>December 28, 2011</b>
Anticipated Start Date for the Provision of Services	<b>January 3, 2011</b>

**Authority**

This RFP is issued under the authority of Title XIX of the Social Security Act (as amended), the regulations issued under the authority thereof, and the provisions of the Code of Iowa and rules of the Iowa Department of Administrative Services (DAS). All bidders are charged with presumptive knowledge of all requirements of the cited authorities, as well as any project management performance review standards. The submission of a valid bid proposal by any bidder will constitute admission of such knowledge on the part of the bidder.

## Section 1 Background and Scope of Work

### 1.1 Background

In alignment with Centers for Medicare and Medicaid Services (CMS) Medicaid Information Technology Architecture (MITA), the State of Iowa currently operates a modular Medicaid business model (the Iowa Medicaid Enterprise) using multiple contractors and operating a certified Medicaid Management Information System (MMIS). Iowa's unique business model is a complex, modular MMIS structure that requires an interdependence of the various modules as well as their supporting contracts.

The IME is a business unit of the Iowa Department of Human Services (represented as the Agency throughout this RFP) and is a collaboration of third party professional service and systems contractors and State staff. The IME is responsible for the day to day administration of the Iowa Medicaid program. The Agency is also responsible for the Children's Health Insurance Program (CHIP – the separate CHIP program is called hawk-i).

The Iowa Medicaid Program reimburses providers for delivery of services to eligible Medicaid members under Title XIX of the Social Security Act through enrolled providers and health plans.

### Iowa MMIS

The Iowa MMIS has been in continuous operation since October 1979. It has evolved continually as a result of phased-in developments and enhancements. The Iowa MMIS is currently certified and eligible for 75 percent federal financial participation (FFP) under 42 CFR, pt. 433, subpart C and Section 1903(a)(4) of the Social Security Act.

The Agency is procuring new systems and new system services to be transitioned into the IME environment and the Agency's Medicaid program. In order to replace the current MMIS/POS and install these new systems and new services the Agency is seeking a Contractor to provide quality assurance services on these services and systems.

### Other Healthcare Projects

The IME has established funding, project management and quality assurance teams for Health Insurance Portability and Accountability Act (HIPAA) 5010, National Council for Prescription Drug Program (NCPDP) D.0 projects and International Classification of Diseases (ICD-10). In 2010 the project teams completed the gap analysis and strategic options analysis for all three projects. The HIPAA 5010 and NCPDP D.0 projects are testing and/or preparing to test with external partners and are on schedule to be fully implemented by January 1, 2012.

IME has selected an implementation strategy for ICD-10 that allows for full compliance by October 1, 2013. The project team members have been identified and began working on scope definition and business requirements in April 2011. The Contractor for this project is participating in a full project review and alignment. Project implementation and testing will be aligned to coordinate with the implementation of the new MMIS/POS systems.

IME has currently implemented the Electronic Health Record (EHR) incentive program using the Iowa Medicaid Portal Application (IMPA) for provider interfaces, CMS national level repository interfaces and OnBase for document and workflow management. Payments are made as gross adjustments through the MMIS system. As the program transitions from Adopt/Implement/Upgrade to meaningful use, the attestation will be modified to closely align with the CMS EHR registration application. Additional information on the current program can be found in the State Medicaid Healthcare Information Technology (HIT) Plan at the following website: <http://www.ime.state.ia.us/Providers/EHRIncentives.html>. Iowa Medicaid will continue to explore opportunities

to share data with the Iowa e-Health health information exchange and to utilize electronic health records within the Medicaid program.

## 1.7 RFP Definitions

Definitions in this section correspond with capitalized terms in the RFP.

**“Agency”** means the Iowa Department of Human Services.

**“Bid Proposal”** or **“Proposal”** means the bidder’s proposal submitted in response to the RFP.

**“Deliverables”** means all of the services, goods, products, work, work product, data (including data collected on behalf of the Agency), items, materials and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or made available through, the contractor (or any agent, contractor or subcontractor of contractor) in connection with any contract resulting from this RFP.

**“Executive Sponsors”** mean a committee of high level managers responsible for the ultimate success of the project.

**“Invoice”** means a contractor’s claim for payment. At the Agency’s discretion, claims may be submitted on an original invoice from the contractor or may be submitted on a claim form accepted by the Agency, such as a General Accounting Expenditure (GAX) form.

**“Iowa Medicaid Enterprise”** means an administrative entity, a collaboration of contractor and State staff, responsible for the day to day administration of the Iowa Medicaid Program. Within this entity many of the State’s staff create Iowa’s Medicaid policies and the contractors’ staff, overseen by State staff, conduct the day to day operations of the IME including claims adjudication and payment, preferred drug list (PDL), drug rebate, pharmacy point of sale (POS), mailroom and imaging, drug rebate, drug utilization review, member services, provider services, medical services, pharmacy medical services, revenue collections, program integrity and provider cost audit and rate setting functions. Medicaid’s data warehouse is operated by the Agency’s Division of Data Management. Currently all IME staff, are co-located at a facility on the south side of Des Moines, Iowa.

## 1.8 Scope of Work

### Introduction

Independent Verification and Validation (IVV) is a set of verification and validation activities performed by an entity that is not under the control of the organization that is developing the software. IVV services must be provided, managed and financed by organizations that are technically, managerially and financially independent of the development project. Technical independence requires that the IVV does not use personnel who are involved in the development effort. Managerial independence requires that the IVV effort be vested in an organization separate from the development and program management organizations. The IVV vendor must be able to submit to the State IVV results and findings without any restrictions (e.g. without any prior review or approval from the development group). Financial independence requires that control of the IVV budget be vested in an organization independent of the development organization and that no dependencies exist in other State or Agency projects.

The definition of activities included under IVV is quite broad, including both technical and management activities. The IVV approach presented in this statement of work differs considerably from standard IVV such as that described in the Institute of Electrical and Electronic Engineers Standard for Software Verification and Validation (IEEE Std 1012-1998). The IVV approach does not require a continuous on-site presence or extensive testing. It instead requires periodic site visits to get a “snapshot” of a project’s management and technical processes at pre-determined intervals.

IVV of the project is not considered to be an ongoing, integral process within the larger development project. Rather it is considered to be a periodically performed adjunct activity that does not fall within the managerial oversight or control of the day-to-day operation of the project’s management structure. The IVV contractor must maintain organizational independence and autonomy from the project’s organization, and therefore has a reduced role from that normally associated with full IVV services. Further, in some respects, the IVV contractor can be viewed as performing a “technology audit”. Bidders should not view their role as that of providing a “continuous presence” to the project such as might be the case with Quality Assurance and Quality Control Services.

Typically IVV means a technical evaluation of a work product, making sure the product is built correctly; it’s intended to verify that project management disciplines are planned and performed according to best practices. Validation means making sure the right product is built, that deliverables and project results meet the goals, objectives and business requirements as intended. For IME purposes, the definition of IVV has been expanded to include selected planning, management and other programmatic activities.

The successful bidder to this RFP will provide independent verification and validation services to the design, development and implementation (DDI) of the System Services contract. The Contractor will represent the State’s interests in the MMIS DDI project providing objective, independent assessments of the new system services contractors’ implementation of the new MMIS/POS identifying risk and recommending risk mitigation. **The Contractor will bring a team of individuals who have the right mix of technical and functional skills including MMIS technical, Medicaid business, project management, technical skills, and IVV expertise.** This team will be experienced in a MMIS replacement project or other large system/services procurement in the health industry and will have successfully provided these types of services in a similar sized MMIS DDI project with similar complexities, interdependencies and coordination requirements. Moreover, the team will be experienced in knowing where these projects typically struggle and how to avoid common pitfalls. And the team will be able to make best practice recommendations.

The following scope of work focuses on the key high level activities and requirements to implement a project of such a large complex nature. Bidders will utilize a structure and the resources needed to be successful within the timeframes of this project and this Contract. Currently the IME System Services project’s DDI is scheduled to begin February 2012 and become operational no later than October 2014.

The Contractor will have a demonstrated knowledge, skills and ability to perform the following activities:

- Develop and keep current a project work plan.
- Assess the Agency and all DDI contractors (including IME professional services contractors) through performance of the tasks described in this RFP’s scope of work. Assessment results and recommendations must be provided to the Agency’s IVV Project Director, the Executive Steering Committee and the Executive Sponsors.
- Assess the project’s structure and resources to identify risk; both avoidance strategies and mitigation strategies for the DDI project.

- Consult with all stakeholders and assess the user involvement and buy-in regarding system functionality and the MMIS/POS systems ability to meet program needs.

Section 1.8 along with Attachment H contains individual IVV sub-tasks included in this procurement. The scope of each assessment should include processes, standards, methods, etc of the DDI contractors including the System Services contractors procured in RFP MED-12-001 and the IME Professional Services contractors (procurements MED-10-001 and MED-10-013) as well as Agency staff.

The Agency will have an independent Project Oversight, Management, and Integration Services (POMI) contractor and an independent Quality Assurance (QA) contractor on-site. The POMI contractor and the QA/QC contractor will both be on-site. The activities included within this scope of work are intended to be different from those performed by the POMI (MED-12-013) or QA/QC (MED-12-014) contractors. However, it is strongly encouraged that the successful IVV contractor work closely with the QA/QC and POMI contractors to ensure there is no duplication of effort and that all activities are complementary.

The technical proposal should be explicit in defining the activities, milestones, resources, and timelines for the project. Detail is to be used in defining how the project will be coordinated, the key personnel and job descriptions needed for the functional IVV activities and how critical risks and issues will be mitigated. Identify all software tools that will be used in completing the scope of work. Identify any gaps in the scope of work as it relates specifically to IVV and define how the gaps would be closed. For key activities bidders should add details, identifying specific tasks under each activity and detail any further deliverables or measures associated with those tasks.

### **1.8.1 Activities, Deliverables, Performance Measures, and Monitoring Activities**

Through this Contract, the Contractor shall provide comprehensive IVV services consistent with the structural framework described in this RFP. Contractor duties shall include but shall not necessarily be limited to the following:

**Key Activity #1:** Prepare and deliver a project work plan for the IVV activities of the project.

**Deliverables:**

- IVV project plan including a description of the activities, personnel, schedule, standards and methodology for conducting the IVV assessments.

**Performance Measures:**

- An initial IVV plan shall be received by the Agency within 10 business days of the start date of the Contract.
- After review by the Agency the Contractor shall submit a final IVV plan for Agency approval within 5 business days of the review with the Agency.
- The IVV Contractor shall keep the IVV project plan current throughout the lifecycle of the DDI project.

**Monitoring:**

- The Agency's IVV Project Director will review and approve the initial IVV plan and all updates shall be approved on a quarterly basis.

**Key Activity #2:** Develop an IVV assessment tool, including assessment criteria, strategies and a schedule of assessments, for the System Services DDI phase and integration of the project including but not necessarily limited to these areas of focus:

- Project management
- Quality management

- Knowledge transfer management
- Requirements management
- Operating environment
- Development environment
- Software development
- System and acceptance testing
- Data management (including conversion and interfaces)
- Operations oversight

**See Attachment H for more details on this activity.**

**Deliverables:**

- IVV assessment tool.
- IVV criteria and strategies.
- IVV assessment schedule.

**Performance Measures:**

- An initial IVV tool with criteria and strategies shall be received by the Agency within 30 calendar days of the start date of the Contract.
- A schedule of assessments shall be delivered within 15 business days of the execution of the Contract.

**Monitoring:**

- The Agency's IVV Project Director will initially review and approve the deliverables and any updates to the tool and all assessments will be reviewed at least quarterly.

**Key Activity #3:** Conduct an initial assessment including all IVV required sub-tasks. Report on the status of each task.

**Deliverables:**

- Initial written IVV report.

**Performance Measures:**

- Within 7 calendar days of the acceptance of an assessment tool by the Agency the IVV contractor shall begin an initial assessment.
- Within 14 calendar days of the completion of the initial assessment a final report shall be delivered to the Agency for approval.

**Monitoring:**

- The Agency's appointed IVV Project Director will confirm the IVV contractor has delivered an accurate, complete initial assessment within the timeframe approved.

**Key Activity #4:** Conduct periodic assessments and prepare and deliver follow-up written IVV reports on the required tasks. Report on the status of each task and the progress since the previous report.

**Deliverables:**

- Written follow-up IVV assessment reports.

**Performance Measures:**

- An assessment is to be conducted monthly.
- Within 14 calendar days of the completion of each assessment a final report shall be delivered to the Agency for approval.

**Monitoring:**

- The Agency's appointed IVV Project Director will confirm the IVV contractor has delivered an accurate, complete assessment within the timeframe approved.

**Key Activity #5:** Plan, schedule and conduct management and project team briefings and other briefings as requested. A formal presentation to the Executive committees and Agency stakeholders will be delivered after each IVV assessment or as directed by the Agency.

**Deliverables:**

- Formal presentations
- Meeting notes
- Meeting agendas
- Walkthroughs on all significant deliverables

**Performance Measures:**

- Prepare and deliver a formal presentation to the Agency's project teams, stakeholders and executive management at the end of each assessment or as directed by the Agency.
- At least 10 business days notice must be given prior to the presentation.
- All agendas will be distributed at least 2 business days prior to the meeting.
- All meeting notes will be distributed within 2 business days after the conclusion of any meeting.

**Monitoring:**

- The Agency's appointed IVV Project Director will monitor for completion of this key activity.

**Key Activity #6:** Conduct an initial risk assessment of the project governance, and project structure including all elements of the flow and decision points identifying all risk points. Conduct monthly risk assessments thereafter.

**Deliverables:**

- Initial written risk assessment and recommended risk mitigation strategies on all identified project risks. Include all elements and risk points.
- Monthly written risk assessments and recommended risk mitigation strategies on project structure, including governance and flow.
- Final written report to be presented to all project teams and stakeholders as to the findings and recommended mitigation strategies.

**Performance Measures:**

- Within 15 business days of the start date of the contract the IVV contractor shall begin an initial risk assessment.
- Every month a periodic risk assessment will be performed on the effectiveness of the project structure.
- Within 14 calendar days of the completion of the initial and periodic assessments a final report shall be delivered to the Agency for approval. All risks associated with the project structure or governance will be identified with risk mitigation strategies recommended.

**Monitoring:**

- The Agency's appointed IVV Project Director will monitor for completion of this key activity.

## **1.9 Payment**

### **1.9.1 Contract Payment Methodology.**

The Contractor may invoice the Agency for 1/12<sup>th</sup> of the annual fixed price during each month of the Contract. The Agency will pay 80% of the invoice value. The remaining 20% may be invoiced by the Contractor at the conclusion of the project after the Agency has confirmed during the close-out of the project that the Agency has approved all deliverables, all performance measures were met satisfactorily, and the Contract has been completely closed out.

## Section 2 Basic Information About the RFP Process

### ***2.1 Issuing Officer.***

The Issuing Officer (or person identified as a designee) is the sole point of contact regarding the RFP from the date of issuance until selection of the successful bidder. The Issuing Officer for this RFP is:

Joanne Rockey  
Iowa Medicaid Enterprise  
100 Army Post Road  
Des Moines, Iowa 50315  
Phone: 515-256-4656  
jrockey@dhs.state.ia.us

### ***2.2 Restriction on Communication.***

From the issue date of this RFP until announcement of the successful bidder, the bidder may contact only the Issuing Officer (or their designee) regarding this RFP. The bidder shall not contact any other Agency employee or an employee of any agency partnering in the release of this RFP. The Issuing Officer will respond only to questions regarding the procurement process.

### ***2.3 Downloading the RFP from the Internet.***

The RFP and any related documents such as amendments or attachments (collectively the “RFP”), and responses to questions will be posted at the State of Iowa’s website for bid opportunities: <http://bidopportunities.iowa.gov/>. Check the web page periodically for any amendments to this RFP. The posted version of the RFP is the official version. The Agency will only be bound by the official version of the documents. Bidders should ensure that any downloaded documents are in fact the most up to date and are unchanged from the official version.

### ***2.5 Intent to Bid.***

The Agency requests that bidders provide their intent to bid to the Issuing Officer by the date and time in the Procurement Timetable. Electronic mail is the preferred delivery method. The intent to bid should include the bidder's name, contact person, mailing address, electronic mail address, fax number, telephone number, and a statement of intent to submit a bid in response to this RFP. Though it is not mandatory that the Agency receive an intent to bid, the Agency will only respond to questions about the RFP that have been submitted by bidders who have expressed their intent to bid. The Agency may cancel an RFP for lack of interest based on the number of letters of intent to bid received.

### ***2.6 Bidders’ Conference.***

The bidders’ conference will be conducted as a conference call on the date and time listed in the Procurement Timetable. The purpose of the bidders’ conference is to inform prospective bidders about the work to be performed and to provide prospective bidders an opportunity to ask questions regarding the RFP. Verbal discussions at the conference shall not be considered part of the RFP unless incorporated into the RFP by amendment. Questions asked at the conference that cannot be adequately answered during the conference may be deferred and responded to in writing. Participation in this conference call is optional, but recommended as this will be the only opportunity to ask verbal questions regarding this RFP. A conference number will be posted on the website prior to the date in the Procurement Timetable.

### ***2.7 Questions, Requests for Clarification, and Suggested Changes.***

Bidders who have provided their intent to bid on the RFP are invited to submit written questions, requests for clarifications, and/or suggestions for changes to the requirements of this RFP (hereafter “Questions”) by the due date and time provided in the Procurement Timetable. Any ambiguity regarding this RFP shall be addressed through the question and answer process. Bidders are not permitted to include assumptions in their Bid Proposals. If the Questions pertain to a specific section of the RFP, the page and section number(s) must be referenced. The Agency prefers to receive Questions by electronic mail at [medicaidrfp@dhs.state.ia.us](mailto:medicaidrfp@dhs.state.ia.us). In the subject line be sure to refer to RFP MED-12-017. Because the Agency cannot assume responsibility for electronic mail that is

prevented from reaching the proper server by any security software, the bidder may wish to request confirmation of receipt from the Issuing Officer.

Written responses to questions will be posted at <http://bidopportunities.iowa.gov/> by the date provided in the Procurement Timetable.

The Agency assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP. In addition, the Agency's written responses to questions will not be considered part of the RFP. If the Agency decides to change the RFP, the Agency will issue an amendment.

**2.8 Submission of Bid Proposal.**

The Bid Proposal shall be received by the Issuing Officer by the time and date specified in the Procurement Timetable. The Agency will not waive this mandatory requirement. Any Bid Proposal received after this deadline will be rejected and will not be evaluated. Electronic or faxed Bid Proposals will not be accepted. Bidders mailing Bid Proposals shall allow ample mail delivery time to ensure timely receipt of their Bid Proposals. It is the bidder's responsibility to ensure that the Bid Proposal is received prior to the deadline. Postmarking or submission to a courier by the due date shall not substitute for actual receipt of the Bid Proposal by the Agency.

**2.9 Amendment to the RFP and Bid Proposal.**

The Agency reserves the right to amend the RFP at any time. Amendments will be posted to the State's website at <http://bidopportunities.iowa.gov/>. If the amendment occurs after the closing date for receipt of Bid Proposals, the Agency may, in its sole discretion, allow bidders to amend their Bid Proposals if necessary.

If the bidder amends their Bid Proposal, the amendment shall be in writing and signed by the bidder. The bidder shall provide the same number of copies of the amendment as is required for the original Bid Proposal. The amendment must be also be submitted on a CD-ROM. The Issuing Officer shall receive the amendment by the deadline for submitting Bid Proposals. The Agency will not waive this mandatory requirement. Electronic mail and faxed amendments will not be accepted.

**2.10 Withdrawal of Bid Proposal.**

The bidder may withdraw its Bid Proposal prior to the closing date for receipt of Bid Proposals by submitting a written request to withdraw to the Issuing Officer. Electronic mail and faxed requests to withdraw will not be accepted.

**2.11 Costs of Preparing the Bid Proposal.**

The costs of preparation and delivery of the Bid Proposal are solely the responsibility of the bidder.

**2.12 Rejection of Bid Proposals.**

The Agency reserves the right to reject any or all Bid Proposals, in whole and in part, and to cancel this RFP at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by the Agency to enter into a contract.

**2.13 Review of Bid Proposals.**

Only bidders that have met the mandatory requirements and are not subject to disqualification will be considered for award of a contract.

**2.13.1 Mandatory Requirements.**

Bidders must meet these mandatory requirements or will be disqualified and not considered for award of a contract:

- The Issuing Officer must receive the Bid Proposal, and any amendments thereof, prior to or on the due date and time (See Section 2.8).
- The bidder is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from receiving federal funding by any federal department or agency (See Additional Certifications Attachment).
- The Bid Proposal contains a bid proposal security. Prior to disqualifying a Bid Proposal for not containing a bid proposal security, the Agency would provide notice to the bidder's email address allowing the bidder forty-eight (48) hours to submit the security to the Issuing Officer (See Section 3.2.1).

### **2.13.2 Reasons Proposals May be Disqualified.**

Bidders are expected to follow the requirements set forth in this RFP. However, it is not the Agency's intent to disqualify Bid Proposals that suffer from correctable flaws. At the same time, it is important to maintain fairness to all bidders in the procurement process. Therefore, Agency reserves the discretion to permit cure of variances, waive variances, or disqualify Bid Proposals for reasons that include, but may not be limited to, the following:

- Bidder initiates unauthorized contact regarding this RFP with employees of the Agency or employees of any agency partnering in the issuance of this RFP (See Section 2.2);
- Bidder fails to comply with the RFP's formatting requirements so that the Bid Proposal cannot be fairly compared to other bids (See Section 3.1);
- Bidder fails to include the content required for the RFP;
- Bidder fails to be fully responsive as required in the Bidder's Approach to Meeting Deliverables Section, states an element of the Scope of Work cannot or will not be met, or does not include information necessary to substantiate that it will be able to meet the Scope of Work requirements (See Section 3.2.4);
- Bidder's response materially changes Scope of Work requirement(s);
- Bidder fails to submit the RFP attachments containing all required signatures (See Section 3.2.3);
- Bidder marks entire Bid Proposal confidential, makes excessive claims for confidential treatment, or identifies pricing information in the Cost Proposal as confidential (See Section 3.1);
- Bidder proposes exceptions or modifications to either the RFP or the attached Sample Contract that materially change the terms or requirements therein (See Section 3.1);
- Bidder includes assumptions in its Bid Proposal (See Section 2.7); or
- Bidder fails to respond to the Agency's request for information, documents, or references.

The determination of whether or not to disqualify a proposal and not consider it for award of a contract for any of these reasons, or to waive or permit cure of variances in Bid Proposals, is at the sole discretion of the Agency. No bidder shall obtain any right by virtue of the Agency's election to not exercise that discretion. In the event the Agency waives or permits cure of variances, such waiver or cure will not modify the RFP requirements or excuse the bidder from full compliance with RFP specifications or other contract requirements if the bidder enters into a contract.

### **2.14 Bid Proposal Clarification Process.**

The Agency may request clarifications from bidders for the purpose of resolving ambiguities or questioning information presented in the Bid Proposals. Clarifications may occur throughout the Bid Proposal evaluation process. Clarification responses shall be in writing and shall address only the information requested. Responses shall be submitted to the Agency within the time stipulated at the occasion of the request.

### **2.15 Verification of Bid Proposal Contents.**

The contents of a Bid Proposal submitted by a bidder are subject to verification.

### **2.16 Reference Checks.**

The Agency reserves the right to contact any reference to assist in the evaluation of the Bid Proposal, to verify information contained in the Bid Proposal, to discuss the bidder's qualifications, and/or to discuss the qualifications of any subcontractor identified in the Bid Proposal.

**2.17 Information from Other Sources.**

The Agency reserves the right to obtain and consider information from other sources concerning a bidder, such as the bidder's capability and performance under other contracts, or the bidder's authority and ability to conduct business in the state.

**2.18 Criminal History and Background Investigation.**

The Agency reserves the right to conduct criminal history and other background investigation of the bidder, its officers, directors, shareholders, or partners and managerial and supervisory personnel retained by the bidder for the performance of the resulting contract. The Agency reserves the right to conduct criminal history and other background investigation of the bidder's staff and subcontractors providing services under the resulting contract.

**2.19 Disposition of Bid Proposals.**

Opened Bid Proposals become the property of the Agency and will not be returned to the bidder. Upon issuance of the Notice of Intent to Award, the contents of all Bid Proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Iowa Code chapter 22 or other applicable law.

**2.20 Public Records and Request for Confidential Treatment.**

Original information submitted by a bidder may be treated as public information by the Agency following the conclusion of the selection process unless the bidder properly requests that information be treated as confidential at the time of submitting the Bid Proposal. See the Bid Proposal Formatting Requirement Section for the proper method for making such requests. The Agency's release of information is governed by Iowa Code chapter 22. Bidders are encouraged to familiarize themselves with Chapter 22 before submitting a Bid Proposal. The Agency will copy public records as required to comply with public records laws.

The Agency will treat the information marked confidential as confidential information to the extent such information is determined confidential under Iowa Code chapter 22 or other applicable law by a court of competent jurisdiction.

In the event the Agency receives a request for information marked confidential, written notice shall be given to the bidder seventy-two (72) hours prior to the release of the information to allow the bidder to seek injunctive relief pursuant to Iowa Code § 22.8.

The bidder's failure to request confidential treatment of material pursuant to this section and the relevant law will be deemed, by the Agency, as a waiver of any right to confidentiality that the bidder may have had.

**2.21 Copyrights.**

By submitting a Bid Proposal, the bidder agrees that the Agency may copy the Bid Proposal for purposes of facilitating the evaluation of the Bid Proposal or to respond to requests for public records. By submitting a Bid Proposal, the bidder acknowledges that additional copies may be produced and distributed, and represents and warrants that such copying does not violate the rights of any third party. The Agency shall have the right to use ideas or adaptations of ideas that are presented in the Bid Proposals.

**2.22 Release of Claims.**

By submitting a Bid Proposal, the bidder agrees that it shall not bring any claim or cause of action against the Agency based on any misunderstanding concerning the information provided herein or concerning the Agency's failure, negligent or otherwise, to provide the bidder with pertinent information as intended by this RFP.

**2.23 Oral Presentations.**

The Agency may request bidder finalists to make an oral presentation of the bid proposal. The presentation will occur at a facility in Des Moines, Iowa. The determination of participants, location, order and schedule for the presentations is at the sole discretion of the Agency. The presentation may include slides, graphics or other media that the bidder selects to illustrate the bidder's proposal. The presentation shall not materially change the information contained in the bid proposal.

**2.24 Notice of Intent to Award.**

Upon CMS approval, Notice of Intent to Award will be sent to all bidders that submitted a Bid Proposal by the due date and time. The Notice of Intent to Award does not constitute the formation of a contract between the Agency and the apparent successful bidder.

**2.25 Acceptance Period.**

The Agency shall make a good faith effort to negotiate and execute the contract. If the apparent successful bidder fails to negotiate and execute a contract, the Agency may, in its sole discretion, revoke the Notice of Intent to Award and negotiate a contract with another bidder or withdraw the RFP. The Agency further reserves the right to cancel the Notice of Intent to Award at any time prior to the execution of a written contract.

**2.26 Review of the Notice of Intent to Award Decision.**

Bidders may request a review of the Notice of Intent to Award decision or any disqualification of a Bid Proposal decision by submitting a written appeal to the Agency Director.

Director's Office  
Iowa Department of Human Services  
Hoover State Office Building  
1305 E. Walnut Street  
Des Moines, Iowa 50319  
(515) 281-5454  
(515) 725-9005 (FAX)  
email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

The Agency must receive the written appeal within five (5) business days from the date of the Notice of Intent to Award, exclusive of weekends and state holidays as set forth in Iowa Code §1C.2. The written appeal may be mailed, faxed, emailed, or delivered. The request to review the Notice of Intent to Award decision shall clearly and fully identify all issues being contested by reference to the page and section number of the RFP. The Director shall review the Notice of Intent to Award decision based on the same information that was before the Evaluation Committee and the Division Administrator. An evidentiary hearing will not be conducted. The Director shall issue a written decision within ten (10) business days of receipt of the review request, exclusive of weekends and state holidays. The decision of the Director shall be final for purposes of Iowa Code chapter 17A. A request to review the Notice of Intent to Award decision shall not stay negotiations with the apparent successful bidder.

**2.27 Definition of Contract.**

The full execution of a written contract shall constitute the making of a contract for services and no bidder shall acquire any legal or equitable rights relative to the contract services until the contract has been fully executed by the apparent successful bidder and the Agency.

**2.28 Choice of Law and Forum.**

This RFP and the resulting contract are to be governed by the laws of the State of Iowa without giving effect to the conflicts of law provisions thereof. Changes in applicable laws and rules may affect the negotiation and contracting process and the resulting contract. Bidders are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought and maintained in the appropriate Iowa forum.

**2.29 Restrictions on Gifts and Activities.**

Iowa Code chapter 68B restricts gifts that may be given or received by state employees and requires certain individuals to disclose information concerning their activities with state government. Bidders must determine the applicability of this Chapter to their activities and comply with the requirements. In addition, pursuant to Iowa Code § 722.1, it is a felony offense to bribe or attempt to bribe a public official.

**2.30 Exclusivity.**

Any contract resulting from this RFP shall not be an exclusive contract.

**2.31 No Minimum Guaranteed.**

The Agency anticipates that the selected bidder will provide services as requested by the Agency. The Agency does not guarantee that any minimum compensation will be paid to the bidder or any minimum usage of the bidder's services.

**2.32 Use of Subcontractors.**

The Agency acknowledges that the selected bidder may contract with third parties for the performance of any of the Contractor's obligations. The Agency reserves the right to provide prior approval for any subcontractor used to perform services under any contract that may result from this RFP.

**Section 3 How to Submit A Bid Proposal: Format and Content Requirements**

These instructions provide the format and technical requirements of the Bid Proposal and are designed to facilitate the submission of a Bid Proposal that is easy to understand and evaluate.

**3.1 Bid Proposal Formatting Requirements.**

Subject	Requirement
<b>Paper Size</b>	8.5" x 11" paper (one side only). Charts or graphs may be provided on legal-sized paper.
<b>Font</b>	Bid Proposals must be typewritten. The font must be 11 point or larger (excluding charts, graphs, or diagrams). Acceptable fonts include Times New Roman, Calibri and Arial.
<b>Pagination</b>	All pages are to be sequentially numbered from beginning to end (do not number Proposal sections independently of each other).
<b>Bid Proposal General Composition</b>	<ul style="list-style-type: none"> <li>• Bid Proposals shall be divided into two parts: Technical Proposal and Cost Proposal.</li> <li>• Technical Proposals submitted in multiple volumes shall be numbered in the following fashion: 1 of 4, 2 of 4, etc.</li> <li>• Bid Proposals must be spiral bound (no 3-ring binders) and use tabs to label sections.</li> </ul>
<b>Envelope Contents and Labeling</b>	<ul style="list-style-type: none"> <li>• Envelopes shall be addressed to the Issuing Officer.</li> <li>• The envelope containing the original Bid Proposal shall be labeled "original" and each envelope containing a copy of the Bid Proposal shall be labeled "copy." Each envelope must be numbered to correspond with the number of copies of Proposals.</li> <li>• The Technical and Cost Proposals must be packaged separately with each copy in its own envelope.</li> </ul>
<b>Number of Hard Copies</b>	Submit one (1) original hard copy of the Proposal and 6 identical copies of the original. The original hard copy must contain original signatures.
<b>CD-ROM</b>	<ul style="list-style-type: none"> <li>• The Technical Proposal and Cost Proposal must be provided on separate CD(s). The CD-ROM must be placed in the envelope with the original Bid Proposal.</li> <li>• The Technical Proposal must be saved in less than five files. The CD(s) must be compatible with Microsoft Office 2007 software. Files shall not be password protected or saved with restrictions that prevent copying, saving, highlighting, or reprinting of the contents.</li> </ul>
<b>Request for Confidential Treatment</b>	<p>Requests for confidential treatment of any information in a Bid Proposal must meet these requirements:</p> <ul style="list-style-type: none"> <li>• The bidder will complete the appropriate section of the Primary Bidder Detail Form &amp; Certification which requires the specific statutory basis supporting the request for confidential treatment and an explanation of why disclosure of the information is not in the best interest of the public.</li> <li>• The bidder shall submit one (1) complete paper copy of the Bid Proposal from which confidential information has been redacted. This copy shall be clearly labeled on the cover as a "public copy", and each page upon which confidential information appears shall be conspicuously marked as containing confidential information. The confidential material shall be redacted in such a way as to allow the public to determine the general nature of the material removed. To the extent possible, pages should be redacted sentence by sentence unless all material on a page is clearly confidential under the law. The bidder shall not identify the entire Bid Proposal as confidential.</li> <li>• The Cost Proposal will be part of the ultimate contract entered into with the successful bidder. Pricing information may not be designated as confidential material. However,</li> </ul>

Subject	Requirement
	<p>Cost Proposal supporting materials may be marked confidential if consistent with applicable law.</p> <ul style="list-style-type: none"> <li>The bidder shall submit a CD-ROM containing an electronic copy of the Bid Proposal from which confidential information has been redacted. This CD-ROM shall be clearly marked as a “public copy”.</li> </ul>
<b>Exceptions to RFP/Contract Language</b>	<p>If the bidder objects to any term or condition of the RFP or attached Sample Contract, specific reference to the RFP page and section number shall be made in the Primary Bidder Detail &amp; Certification Form. In addition, the bidder shall set forth in its Bid Proposal the specific language it proposes to include in place of the RFP or contract provision and cost savings to the Agency should the Agency accept the proposed language.</p> <p>Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by the Agency, in its sole discretion, resulting in possible disqualification of the Bid Proposal. The Agency reserves the right to either execute a contract without further negotiation with the successful bidder or to negotiate contract terms with the selected bidder if the best interests of the Agency would be served.</p>

**3.2 Contents and Organization of Technical Proposal.**

This section describes the information that must be in the Technical Proposal. Bid Proposals should be organized into sections **in the same order provided here** using tabs to separate each section.

**3.2.1 Information to Include Behind Tab 1:**

**Transmittal Letter.**

The transmittal letter serves as a cover letter for the Technical Proposal. It must consist of an executive summary that briefly reviews the strengths of the bidder and key features of its proposed approach to meet the requirements of this RFP.

**Bid Proposal Security.**

The bidder shall submit a bid bond, a certified or cashier’s check, or an irrevocable letter of credit in favor of or made payable to the Agency in the amount of \$5,000. The bid proposal security must be valid beginning on the Bid Proposal due date for 120 days. The bidder understands that if the bidder elects to use a bond, a surety licensed to do business in Iowa must issue the bond on a form acceptable to the Agency. The bidder understands that the bid proposal security shall be forfeited if the bidder is chosen to receive the contract and withdraws its Bid Proposal after the Agency issues a Notice of Intent to Award, does not honor the terms offered in its Bid Proposal, or does not negotiate contract terms in good faith. The bidder further understands that the bid proposal security submitted by bidders will be returned, if not forfeited for reasons stated above, when the Bid Proposals expire, are rejected, or the Agency enters into a contract with the successful bidder, whichever is earliest.

**3.2.2 Information to Include Behind Tab 2: Proposal Table of Contents.**

The Bid Proposal must contain a table of contents.

**3.2.3 Information to Include Behind Tab 3: RFP Forms.**

The forms listed below are attachments to this RFP. Fully complete and return these forms behind Tab 3:

- Release of Information Form
- Primary Bidder Detail & Certification Form
- Subcontractor Disclosure Form (one for each proposed subcontractor)

**3.2.4 Information to Include Behind Tab 4: Bidder’s Approach to Meeting Key Activities.**

The bidder shall address each Key Activity that the successful Contractor will perform as listed in Section 1.8 (Scope of Work) by first restating the Key Activity from the RFP and then explaining the bidder's planned approach to meeting each Activity immediately after the restated text. Bid Proposals shall be fully responsive and must not merely repeat the Activity.

Bidders are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, examples, processes, and procedures.

**Note:**

- Responses to Key Activities shall be in the same sequence as presented in the RFP.
- Bid Proposals shall identify any deviations from the requirements the bidder cannot satisfy.
- Bid Proposals shall not contain promotional or display materials unless specifically required.
- If a bidder proposes more than one method of meeting the RFP requirements, each method must be drafted and submitted as separate Bid Proposals. Each will be evaluated separately.

**3.2.5 Information to Include Behind Tab 5: Bidder's Background.**

**3.2.5.1 Experience.**

The bidder shall provide the following information regarding the organization's experience:

- Level of technical experience in providing the types of services sought by the RFP.
- Description of all services similar to those sought by this RFP that the bidder has provided to other businesses or governmental entities within the last twenty-four (24) months.

For each similar service, provide a matrix detailing:

- Project title;
  - Project role (primary Contractor or subcontractor);
  - Name of client agency or business;
  - Start and end dates of service;
  - Contract value;
  - General description of the scope of work;
  - Whether the services were provided timely and within budget; and
  - Contact information for the client's project manager including address, telephone number, and electronic mail address.
- Description of all contracts and projects currently undertaken by the bidder. Descriptions provided for the immediately preceding requirement do not need to be repeated again.
  - Letters of reference from three (3) previous clients knowledgeable of the bidder's performance in providing services similar to those sought in this RFP, including a contact person, telephone number, and electronic mail address for each reference. It is preferred that letters of reference are provided for services that were procured in a competitive environment.
  - Description of experience managing subcontractors, if the bidder proposes to use subcontractors.

**3.2.5.2 Personnel.**

The bidder shall provide the following information regarding personnel:

**3.2.5.2.1 Tables of Organization.**

Illustrate the lines of authority in two tables:

- One showing overall operations
- One showing staff who will provide services under the RFP

**3.2.5.2.2 Names and Credentials of Personnel.**

### 3.2.5.2.3 Project Manager and Key Project Personnel.

- Include names and credentials for the project/account manager and any additional key project personnel who will be involved in providing services sought by this RFP. Include resumes for these personnel. The resumes shall include: name, education, and years of experience and employment history, particularly as it relates to the scope of services specified herein. Resumes should not include social security numbers. The Agency reserves the right to provide prior approval for any project manager/account manager and key personnel used to perform services under any contract that may result from this RFP.
- Include the project manager's/account manager's experience managing subcontractor staff if the bidder proposes to use subcontractors.
- Include the percentage of time the project manager/account manager and key project personnel will devote to this project on a monthly basis.

### 3.2.5.3 Financial Statements.

The bidder shall submit audited financial statements from independent auditors for the last three (3) years. Entities not required to have audited financial statements may submit CPA-prepared unaudited financial statements.

### 3.2.5.4 Termination, Litigation, and Investigation.

Bid Proposals must indicate whether any of the following conditions have been applicable to the bidder, or a holding company, parent company, subsidiary, or intermediary company of the bidder during the past five (5) years. If any of the following conditions are applicable, then the bidder shall state the details of the occurrence. If none of these conditions is applicable to the bidder, the bidder shall so indicate.

- List any contract for services that the bidder has had that was terminated for convenience, non-performance, non-allocation of funds, or any other reason for which termination occurred before completion of all obligations under the contract provisions.
- List any occurrences where the bidder has either been subject to default or has received notice of default or failure to perform on a contract. Provide full details related to the default or notice of default including the other party's name, address, and telephone number.
- List any damages, penalties, disincentives assessed, or payments withheld, or anything of value traded or given up by the bidder under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP. Include the estimated cost of that incident to the bidder with the details of the occurrence.
- List and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters related to the subject matter of the services sought in this RFP.
- List any irregularities that have been discovered in any of the accounts maintained by the bidder on behalf of others. Describe the circumstances of irregularities or variances and detail how the issues were resolved.
- List any details of whether the bidder or any owners, officers, primary partners, staff providing services or any owners, officers, primary partners, or staff providing services of any subcontractor who may be involved with providing the services sought in this RFP, have ever had a founded child or dependent adult abuse report, or been convicted of a felony.

**Note:** Failure to disclose information about the matters in this section may result in rejection of the Bid Proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a Bid Proposal, and with respect to the successful bidder after the execution of a contract, shall be disclosed in a timely manner in a written statement to the Agency. For purposes of this subsection, timely means within thirty (30) days from the date of conviction, regardless of appeal rights.

**3.3 Cost Proposal.**

The Cost Proposal will consist of the following sections in the order listed below and separated by tabs.

Section Title	Tab Number
Table of Contents	1
Bid Proposal Security	2
Pricing Schedule	3

**3.3.1 Table of Contents (Tab 1)**

The Table of Contents will identify all sections (which are separated by tabs), all subsections contained therein, and the corresponding page numbers.

**3.3.2 Bid Proposal Security (Tab 2)**

Each bidder's original copy of the Cost Proposal shall be accompanied by the original proposal bid bond payable to the Agency or original letter of credit equal to \$5,000. Copies of the Cost Proposal can include copies of the bond or letter.

**3.3.3 Pricing Schedule (Tab 3)**

Bidders are to include the pricing schedule in RFP Attachment F.

## Section 4 Evaluation Of Bid Proposals

### **4.1 Introduction.**

This section describes the evaluation process that will be used to determine which Bid Proposal provides the greatest benefits to the Agency. The Agency will not necessarily award a contract to the bidder offering the lowest cost to the Agency or to the bidder with the highest point total. Rather, a contract will be awarded to the bidder that offers the greatest benefit to the Agency.

### **4.2 Evaluation Committee.**

The Agency intends to conduct a comprehensive, fair and impartial evaluation of Bid Proposals received in response to this RFP. In making this determination, the Agency will be represented by an evaluation committee.

Committee members will score the Technical and Cost Proposals using criteria established for this RFP. The committee will meet at the completion of their independent evaluation to address any questions raised by their respective reviews and discuss the relative merits of each bidder's Bid Proposal. Thereafter, the committee may continue to discuss and rescore the Bid Proposals until the committee determines that the scores accurately reflect the committee's assessment of the relative merits of the Bid Proposals based upon all information presented.

### **4.3 Recommendation of the Evaluation Committee.**

The evaluation committee will forward their final recommendations to the Division Administrator (State Medicaid Director) for a final decision and contract award, if appropriate. The recommendation shall be based on all information received through the evaluation process and shall provide the evaluation committee's assessment of the bidder that will provide the greatest benefit to the Agency. The evaluation committee will recommend the bidder with the greatest total point value or a recommendation that no bidder be selected.

The Agency reserves the right to take any additional steps deemed necessary in determining the final award, which may include negotiations with the selected bidder. The State Medicaid Director may accept or reject the recommendation of the evaluation committee, or the RFP may be cancelled or rebid at the sole discretion of the Agency,

The State Medicaid Director's decision is final for purposes of Iowa Administrative Code Chapter 17A.

### **4.4 Proposal Scoring and Evaluation Criteria.**

#### **4.4.1 Scoring Guide.**

Points will be assigned to each evaluation component as follows:

50	Bidder's Proposal or capability is exceptional and exceeds expectations for this criterion.
40	Bidder's Proposal or capability is superior and slightly exceeds expectations for this criterion.
30	Bidder's Proposal or capability is satisfactory and marginally meets expectations for this criterion.
20	Bidder's Proposal or capability is fair and questionably meets expectations for this criterion.
10	Bidder's Proposal or capability is either not acceptable or not applicable for this criterion.

#### **4.4.2 Technical Proposal Components.**

When Bid Proposals are evaluated, the total points for each component is comprised of the component's assigned weight multiplied by the score the Bid Proposal earns. Points for all components will be added together. A minimum technical score of 45,000 points out of a maximum of 75,000 points must be accumulated for the technical proposal to be considered competitive and determines whether the cost proposal will be evaluated. If

the technical proposal receives less than 45,000 points, the cost proposal will not be considered. The evaluation components, including maximum points that may be awarded, is as follows:

<u>Technical Proposal Components</u>	<u>Weight</u>	<u>Score (10-50)</u>	<u>Potential Maximum Points</u>
<b>Executive Summary</b>	100	10-50	5,000
Scope of Work			-
<b>Planning</b> (Activities 1,2)	200	10-50	10,000
<b>Assessments</b> (Activities 3,4,5)	500	10-50	25,000
<b>Reporting</b> (Activity 6)	200	10-50	10,000
<b>Corporate Qualifications</b>	100	10-50	5,000
<b>Key Personnel Qualifications</b>	200	10-50	10,000
<b>Oral Presentations</b>	200	10-50	10,000
<b>TOTAL</b>	1,500		<b>75,000</b>

**4.4.3 Scoring of Cost Proposals**

The bidder with the lowest price received will receive the maximum points.

In order to calculate every other bidder’s score (other than the bidder who received maximum points) for each Cost Proposal will be divided into the corresponding value of the lowest bidder and then multiplied by the 25,000 maximum points. The formula for each is expressed as follows:

$$\text{Bidder's Cost Score} = (\text{Lowest Cost} / \text{Bidder Cost}) \times \text{Maximum Points}$$

<b>COST SECTION</b>	<b>AVAILABLE POINTS</b>	<b>% ASSIGNED</b>	<b>SCORE</b>
<b>Cost</b>	<b>25,000</b>		

**4.4.4 Technical and Cost Proposals Combined**

Technical and Cost Proposal scores will be combined to establish a final score for each bidder. The maximum Total Score is 100,000 points. Proposals will be ranked according to total score in order to facilitate a recommendation from the Evaluation Committee

<b>TOTAL SCORE = TECHNICAL SECTION TOTAL + COST SECTION</b>	
---	--

**Attachment A: Release of Information**  
*(Return this completed form behind Tab 3 of the Bid Proposal.)*

\_\_\_\_\_ (name of bidder) hereby authorizes any person or entity, public or private, having any information concerning the bidder's background, including but not limited to its performance history regarding its prior rendering of services similar to those detailed in this RFP, to release such information to the Agency.

The bidder acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The bidder acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the Agency or may otherwise hurt its reputation or operations. The bidder is willing to take that risk. The bidder agrees to release all persons, entities, the Agency, and the State of Iowa from any liability whatsoever that may be incurred in releasing this information or using this information.

\_\_\_\_\_  
Printed Name of Bidder Organization

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**Attachment B: Primary Bidder Detail Form & Certification**

*(Return this completed form behind Tab 3 of the Proposal. If a section does not apply, label it “not applicable”).*

Primary Contact Information (individual who can address issues re: this Bid Proposal)	
Name:	
Address:	
Tel:	
Fax:	
E-mail:	

Primary Bidder Detail	
Business Legal Name (“Bidder”):	
“Doing Business As” names, assumed names, or other operating names:	
Parent Corporation, if any:	
Form of Business Entity (i.e., corp., partnership, LLC, etc.):	
State of Incorporation/organization:	
Primary Address:	
Tel:	
Fax:	
Local Address (if any):	
Addresses of Major Offices and other facilities that may contribute to performance under this RFP/Contract:	
Number of Employees:	
Number of Years in Business:	
Primary Focus of Business:	
Federal Tax ID:	
Bidder’s Accounting Firm:	
If Bidder is currently registered to do business in Iowa, provide the Date of Registration:	
Do you plan on using subcontractors if awarded this Contract? {If “YES,” submit a Subcontractor Disclosure Form for each proposed subcontractor.}	(YES/NO)

Request for Confidential Treatment (See Section 3.1)		
Location in Bid (Tab/Page)	Statutory Basis for Confidentiality	Description/Explanation

Exceptions to RFP/Contract Language (See Section 3.1)			
RFP Section and Page	Language to Which Bidder Takes Exception	Explanation and Proposed Replacement Language:	Cost Savings to the Agency if the Proposed Replacement Language is Accepted

**BID PROPOSAL CERTIFICATION**

By signing below, Bidder certifies that:

- Bidder accepts and will comply with all Contract Terms and Conditions contained in the Sample Contract without change except as otherwise expressly stated in the Primary Bidder Detail Form & Certification.
- Bidder has reviewed the Additional Certifications, which are incorporated herein by reference, and by signing below represents that Bidder agrees to be bound by the obligations included therein.
- Bidder does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or handicap;
- No cost or pricing information has been included in the Bidder’s Technical Proposal;
- Bidder has received any amendments to this RFP issued by the Agency;
- Bidder either is currently registered to do business in Iowa or agrees to register if Bidder is awarded a Contract pursuant to this RFP;
- The person signing this Bid Proposal certifies that he/she is the person in the Bidder’s organization responsible for, or authorized to make decisions regarding the prices quoted and he/she has not participated, and will not participate, in any action contrary to the anti-competitive agreements outlined above;
- Bidder specifically stipulates that the Bid Proposal is predicated upon the acceptance of all terms and conditions stated in the RFP and the Sample Contract without change except as otherwise expressly stated in the Primary Bidder Detail Form & Certification. Objections or responses shall not materially alter the RFP. All changes to proposed contract language, including deletions, additions, and substitutions of language, must be addressed in the Bid Proposal;
- Bidder certifies that the Bidder organization has sufficient personnel resources available to provide all services proposed by the Bid Proposal, and such resources will be available on the date the RFP states services are to begin. Bidder guarantees personnel proposed to provide services will be the personnel providing the services unless prior approval is received from the Agency to substitute staff;
- Bidder certifies that if the Bidder is awarded the contract and plans to utilize subcontractors at any point to perform any obligations under the contract, the Bidder will (1) notify the Agency in writing prior to use of the subcontractor, and (2) apply all restrictions, obligations, and responsibilities of the resulting contract between the Agency and Contractor to the subcontractors through a subcontract. The Contractor will remain responsible for all Deliverables provided under this contract.
- Bidder guarantees the availability of the services offered and that all Bid Proposal terms, including price, will remain firm until a contract has been executed for the services contemplated by this RFP or one year from the issuance of this RFP, whichever is earlier; and,
- Bidder certifies it is either a) registered or will become registered with the Iowa Department of Revenue to collect and remit Iowa sales and use taxes as required by Iowa Code chapter 423; or b) not a “retailer” of a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Bidder also acknowledges that the Agency may declare the bid void if the above certification is false. Bidders may register with the Department of Revenue online at: <http://www.state.ia.us/tax/business/business.html>.

By signing below, I certify that I have the authority to bind the Bidder to the specific terms, conditions and technical specifications required in the Agency’s Request for Proposals (RFP) and offered in the Bidder’s Proposal. I understand that by submitting this Bid Proposal, the Bidder agrees to provide services described herein which meet or exceed the requirements of the Agency’s RFP unless noted in the Bid Proposal and at the prices quoted by the Bidder. I certify that the contents of the Bid Proposal are true and accurate and that the Bidder has not made any knowingly false statements in the Bid Proposal.

<b>Signature:</b>	
<b>Printed Name/Title:</b>	
<b>Date:</b>	

**Attachment C: Subcontractor Disclosure Form**

*(Return this completed form behind Tab 3 of the Bid Proposal. Fully complete a form for each proposed subcontractor. If a section does not apply, label it “not applicable.” If the bidder does not intend to use subcontractor(s), this form does not need to be returned.)*

<b>Primary Bidder (“Primary Bidder”):</b>	
<b>Subcontractor Contact Information (individual who can address issues re: this RFP)</b>	
<b>Name:</b>	
<b>Address:</b>	
<b>Tel:</b>	
<b>Fax:</b>	
<b>E-mail:</b>	

<b>Subcontractor Detail</b>	
<b>Subcontractor Legal Name (“Subcontractor”):</b>	
<b>“Doing Business As” names, assumed names, or other operating names:</b>	
<b>Form of Business Entity (i.e., corp., partnership, LLC, etc.)</b>	
<b>State of Incorporation/organization:</b>	
<b>Primary Address:</b>	
<b>Tel:</b>	
<b>Fax:</b>	
<b>Local Address (if any):</b>	
<b>Addresses of Major Offices and other facilities that may contribute to performance under this RFP/Contract:</b>	
<b>Number of Employees:</b>	
<b>Number of Years in Business:</b>	
<b>Primary Focus of Business:</b>	
<b>Federal Tax ID:</b>	
<b>Subcontractor’s Accounting Firm:</b>	
<b>If Subcontractor is currently registered to do business in Iowa, provide the Date of Registration:</b>	
<b>Percentage of Total Work to be performed by this Subcontractor pursuant to this RFP/Contract.</b>	
<b>General Scope of Work to be performed by this Subcontractor</b>	
<b>Detail the Subcontractor’s qualifications for performing this scope of work</b>	

By signing below, Subcontractor agrees to the following:

1. Subcontractor has reviewed the RFP, and Subcontractor agrees to perform the work indicated in this Bid Proposal if the Primary Bidder is selected as the winning bidder in this procurement.
2. Subcontractor has reviewed the Additional Certifications and by signing below confirms that the Certifications are true and accurate and Subcontractor will comply with all such Certifications.
3. Subcontractor agrees that it will register to do business in Iowa before performing any services pursuant to this contract, if required to do so by Iowa law.
4. Subcontractor does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or handicap;

The person signing this Subcontractor Disclosure Form certifies that he/she is the person in the Subcontractor's organization responsible for or authorized to make decisions regarding the prices quoted and he/she has not participated, and will not participate, in any action contrary to the anti-competitive obligations agreements outlined above.

I hereby certify that the contents of the Subcontractor Disclosure Form are true and accurate and that the Subcontractor has not made any knowingly false statements in the Form.

<b>Signature for Subcontractor:</b>	
<b>Printed Name/Title:</b>	
<b>Date:</b>	

**Attachment D: Additional Certifications**  
*(Do not return this page with the Bid Proposal.)*

**CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF INTEREST**

By submission of a Bid Proposal, the bidder certifies (and in the case of a joint proposal, each party thereto certifies) that:

1. The Bid Proposal has been developed independently, without consultation, communication or agreement with any employee or consultant of the Agency who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee;
2. The Bid Proposal has been developed independently, without consultation, communication or agreement with any other bidder or parties for the purpose of restricting competition;
3. Unless otherwise required by law, the information in the Bid Proposal has not been knowingly disclosed by the bidder and will not knowingly be disclosed prior to the award of the contract, directly or indirectly, to any other bidder;
4. No attempt has been made or will be made by the bidder to induce any other bidder to submit or not to submit a Bid Proposal for the purpose of restricting competition;
5. No relationship exists or will exist during the contract period between the bidder and the Agency that interferes with fair competition or is a conflict of interest.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this Bid Proposal, the bidder is providing the certification set out below:

1. 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 bidder knowingly rendered an erroneous certification, 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.
2. The bidder shall provide immediate written notice to the person to whom this Bid Proposal is submitted if at any time the bidder learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. 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 Proposal is submitted for assistance in obtaining a copy of those regulations.
4. The bidder agrees by submitting this Proposal 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.
5. The bidder further agrees by submitting this Proposal 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.

6. 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 Non-procurement Programs.
7. 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.
8. 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.

#### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND/OR VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS**

1. The bidder certifies, by submission of this Proposal, 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.
2. Where the bidder is unable to certify to any of the statements in this certification, such bidder shall attach an explanation to this Proposal.

#### **CERTIFICATION OF COMPLIANCE WITH PRO-CHILDREN ACT OF 1994**

The bidder 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 services 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 bidder further agrees that the above language will be included in any sub-awards that contain provisions for children's services and that all sub-grantees 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.

#### **CERTIFICATION REGARDING LOBBYING**

The bidder certifies, to the best of his or her knowledge and belief, that:

1. 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.

2. 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.
3. The bidder 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.

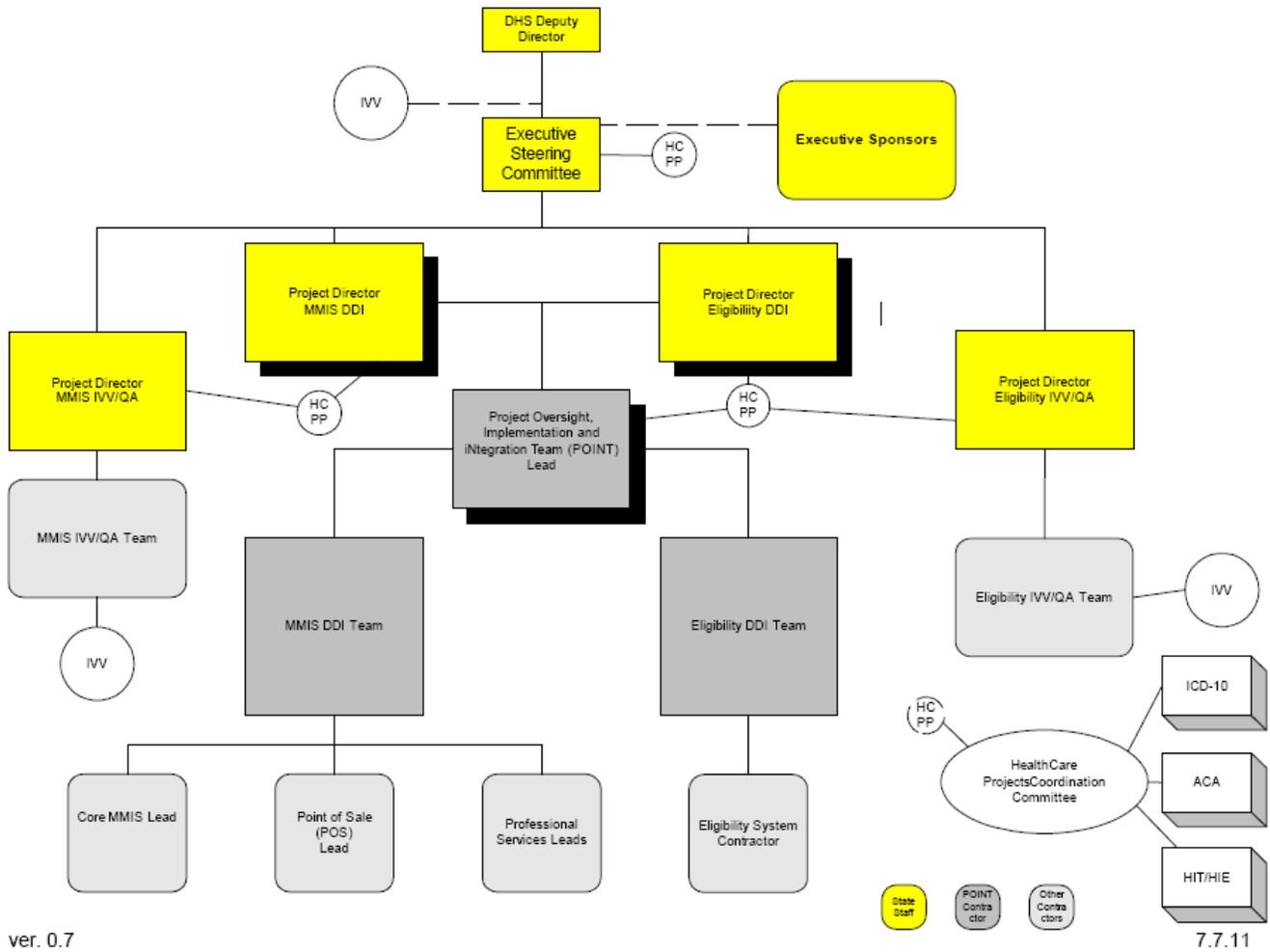
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.A. Any person who fails to file 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.

## **CERTIFICATION REGARDING DRUG FREE WORKPLACE**

1. **Requirements for Contractors Who are Not Individuals.** If the bidder is not an individual, by signing below bidder agrees to provide a drug-free workplace by:
  - a. 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;
  - b. establishing a drug-free awareness program to inform employees about:
    - (1) the dangers of drug abuse in the workplace;
    - (2) the person's policy of maintaining a drug-free workplace;
    - (3) any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) the penalties that may be imposed upon employees for drug abuse violations;
  - c. 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);
  - d. notifying the employee in the statement required by subparagraph (a), that as a condition of employment on such contract, the employee will:
    - (1) abide by the terms of the statement; and
    - (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
  - e. notifying the contracting agency within 10 days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
  - f. 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
  - g. making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (a), (b), (c), (d), (e), and (f).
2. **Requirement for Individuals.** If the bidder is an individual, by signing below the bidder agrees to not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.
3. **Notification Requirement.** The bidder 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):
  - a. take appropriate personnel action against such employee up to and including termination; or

- b.** 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.

Attachment E: Implementation Governance



ver. 0.7

**ATTACHMENT F**  
Iowa Medicaid Enterprise  
**Summary Pricing Schedule**  
**Independent Verification and Validation Services**

		<b>Year 1</b> Jan 2012 Dec 2012	<b>Year 2</b> Jan 2012 Dec 2013	<b>Year 3</b> Jan 2013 Dec 2014	<b>Year 4</b> <b>Optional</b> Jan 2014 Dec 2015	<b>Year 5</b> <b>Optional</b> Jan 2015 Dec 2016	<b>Year 6</b> <b>Optional</b> Jan 2016 Dec 2017	<b>TOTAL</b>
<b>1</b>	<b>Independent Verification and Validation Price Per Calendar Year</b>	\$	\$	\$	\$	\$	\$	\$

		Jan 2012 Jun 2012	Jul 2012 Jun 2013	Jul 2013 Jun 2014	Jul 2014 Jun 2015	Jul 2015 Jun 2016	Jul 2016 Jun 2017	Jul 2017 Dec 2017	<b>TOTAL</b>
<b>2</b>	<b>Independent Verification and Validation Price Per Fiscal Year</b>	\$	\$	\$	\$	\$	\$	\$	\$

So that the State may better plan by fiscal year, please complete both charts. The total value of the contract will be the same.

NOTE: Bidders may not declare this cost proposal form confidential in any way.

**Attachment G  
Request For Proposal  
Service Procurements**

RFP Procurement	Title	Description	Contract Start Date
RFP MED-09-017	HIPAA and ICD-10 Technical Assistance and Support	To procure a set of services to provide assessment, project oversight and technical assistance to meet the federal requirements for HIPAA 5010, NCPDP D.0 and ICD-10 compliance.	March 1, 2010
RFP MED-10-001	Iowa Medicaid Enterprise Professional Services	To procure a new set of services that will perform professional operational services in the IME. Six functional areas of the IME were re-procured.	May 1, 2010
RFP-MED-10-013	Iowa Medicaid Enterprise Program Integrity Services	To procure a set of services and tools that will provide program integrity services and data analytical tools to the IME.	May 1, 2010
RFP ACFS-11-134	Iowa Integrated Eligibility Project (IIEP)	To procure a new integrated eligibility system and implement this new system into the Agency's operating environment.	June 1, 2012
RFP ACFS-12-253	Project Director Services for the Iowa Integrated Eligibility Project (IIEP)	To procure a project director to act on behalf of the Agency to oversee and manage the IIEP implementation	December 1, 2011
RFP MED-12-001	Iowa Medicaid Enterprise (IME)System Services	To procure a new Medicaid Management Information System (MMIS) and Pharmacy Point of Sale (POS) systems for implementation and use in the IME. Also, a set of operational services for a Core MMIS Contractor and a POS Contractor will be awarded to transition into the current IME business model.	January 1, 2012
RFP MED-12-003	Electronic Health Records Medicaid Incentive Payment Administration	To procure a software application that will accept attestation for the	November 1, 2011

**Attachment G  
Request For Proposal  
Service Procurements**

RFP Procurement	Title	Description	Contract Start Date
	Tool	meaningful use of electronic health records and administer incentive payments.	
RFP MED-12-013	Project Oversight, Implementation and Integration Services	To procure a set of services and skill sets to manage, oversee, and integrate the services procured in ACFS-11-134 and MED-12-001 to a successful implementation	January 1, 2012
RFP MED-12-014	Quality Assurance and Quality Control Services for the MMIS Implementation Project	To procure a set of services and skill sets to provide quality assurance and quality control services as the result of the implementation of the IME System Services (MED-12-001)	January 1, 2012
RFP MED-12-017	Independent Verification and Validation for the MMIS Implementation Project	To procure a set of services and skill sets to independently verify and validate the implementation activities of all parties relating to the implementation of the System Services project.	January 1, 2012
RFP MED-12-018	Project Director Services for the MMIS Implementation Project	To procure a project director to act on behalf of the Agency to oversee and manage the MMIS implementation	October 1, 2011

## Attachment H

### Sub-tasks for Key Activity #2

Topic	ID	Description
<b>Project Management</b>		
<b>Configuration Management</b>	PM1	Review and evaluate the configuration management (CM) plans and procedures associated with the development process.
	PM2	Verify that all critical development documents, including but not limited to requirements, design, code and JCL are maintained under an appropriate level of control.
	PM3	Verify that the processes and tools are in place to identify code versions and to rebuild system configurations from source code.
	PM4	Verify that appropriate source and object libraries are maintained for training, test and production and that formal sign-off procedures are in place for approving deliverables.
	PM5	Verify that mechanisms are in place to prevent unauthorized changes being made to the system and to prevent authorized changes from being made to the wrong version.
	PM6	Review the use of CM information (such as the number and type of corrective maintenance actions over time) in project management.
	PM7	Review the use of CM Processes in managing changes and version control of Commercial Off the Shelf (COTS) products being implemented.
<b>Technical Project Personnel</b>	PM8	Examine the job assignments, skills, training and experience of the personnel involved in system development to verify that they are adequate for the development task.
	PM9	Evaluate the State's hiring plan for the project to verify that adequate human resources will be available for development and maintenance.
	PM10	Evaluate the State's personnel policies to verify that staff turnover will be minimized.
<b>Technical Project Organization</b>	PM11	Verify that lines of reporting and responsibility provide adequate technical and managerial oversight of the project.
	PM12	Verify that the project's organizational structure supports training, process definition, independent Quality Assurance, Configuration Management, product evaluation, and any other functions critical for the project's success.
	PM13	Verify that the sub-contractors' software development methodology and product standards are compatible with the systems' standards and environment.
<b>Quality Management</b>		
<b>Quality Assurance</b>	QM1	Evaluate and make recommendations on the Design, Development, Implementation (DDI) vendors and IME Quality Assurance plans, procedures and organization based on industry best practices and quality control principles.
	QM2	Verify that the DDI vendors' QA have an appropriate level of

		independence from project management.
	QM3	Verify that the DDI vendors' QA organizations monitor the fidelity of all defined processes in all phases of the project.
	QM4	Verify that the quality of all products produced by the project is monitored by formal reviews and sign-offs.
	QM5	Verify that project self-evaluations are performed and that measures are continually taken to improve the process.
	QM6	Monitor the performance of the DDI vendors and the IME by reviewing its processes and reports and performing spot checks of system documentation; assess findings and performance of the processes and reports.
	QM7	Verify that the QA vendor provides periodic assessment of the CMM activities of the project and that the project takes action to reach and maintain CMM Level 3.
	QM8	Evaluate if appropriate mechanisms are in place for project self-evaluation and process improvement.
	QM9	Review and make recommendations on all defined processes and product standards associated with the system development.
<b>Process Definition and Product Standards</b>	QM10	Verify that all major development processes are defined and that the defined and approved processes and standards are followed in development.
	QM11	Verify that the processes and standards are compatible with each other and with the system development methodology.
	QM12	Verify that all process definitions and standards are complete, clear, up-to-date, consistent in format, and easily available to project personnel.
<b>Knowledge Transfer</b>		
<b>Developer Training and Documentation</b>	KT1	Review and verify that developer training is technically adequate, appropriate for the development phase, and available at appropriate times.
	KT2	Verify that all necessary policy, process and standards documentation is easily available to developers.
	KT3	Verify that all training is given on-time and is evaluated and monitored for effectiveness, with additional training provided as needed.
<b>Requirements Management</b>		
<b>Requirements Management</b>	RM1	Verify that all requirements have been allocated to a software or hardware subsystem.
<b>Security Requirements</b>	RM2	Evaluate whether the project's policies on system and data access are followed.
<b>Reverse Engineering</b>	RM3	If a legacy system or a transfer system is or will be used in development, verify that a well defined plan and process for reengineering the system is in place and is followed. The process, depending on the goals of the reuse/transfer, may include reverse engineering, code translation, re-documentation, restructuring, normalization, and re-targeting.
<b>Operating</b>		

<b>Environment</b>		
<b>System Hardware</b>	OE1	Evaluate new and existing system hardware configurations to determine if their performance is adequate to meet existing and proposed system requirements.
	OE2	Determine if hardware is compatible with the State's existing processing environment, if it is maintainable, and if it is easily upgradeable. This evaluation will include, but is not limited to CPUs and other processors, memory, network connections and bandwidth, communication controllers, telecommunications systems (LAN/WAN), terminals, printers and storage devices.
	OE3	Evaluate current and projected vendor support of the hardware, as well as the State's hardware configuration management plans and procedures.
<b>System Software</b>	OE4	Evaluate new and existing system software to determine if its capabilities are adequate to meet existing and proposed system requirements.
	OE5	Determine if the software is compatible with the State's existing hardware and software environment, if it is maintainable, and if it is easily upgradeable. This evaluation will include, but is not limited to operating systems, middleware, and network software including communications and file-sharing protocols.
	OE6	Evaluate adequacy of current and projected DDI vendors support of the application software.
<b>Database Software</b>	OE7	Evaluate new and existing database products to determine if their capabilities are adequate to meet existing proposed system requirements.
	OE8	Determine if the database's data format is easily convertible to other formats, if it supports the addition of new data items, if it is scalable, if it is easily refreshable and if it is compatible with the State's existing hardware and software, including any on-line transaction processing (OLTP) environment.
	OE9	Evaluate whether the DDI vendors have appropriate resources to support the database software.
<b>System Capacity</b>	OE10	Evaluate the existing processing capacity of the system and verify that it is adequate for current statewide needs for both batch and on-line processing.
	OE11	Evaluate the historic availability and reliability of the system including the frequency and criticality of system failure.
	OE12	Evaluate the results of any volume testing or stress testing.
	OE13	Evaluate any existing measurement and capacity planning program and evaluate the systems' capacity to support future growth.
	OE14	Make recommendations on changes in processing hardware, storage, network systems, operating systems, COTS software, and software design to meet future growth and improve system performance.
<b>Back-up and</b>	OE15	Verify that processes and equipment are in place to back up

<b>Recovery</b>		client and project data and files and archive them safely at appropriate intervals.
<b>Development Environment</b>		
<b>Development Hardware</b>	DE1	Evaluate new and existing development hardware configurations to determine if their performance is adequate to meet the needs of system development.
	DE2	Determine if hardware is maintainable, easily upgradeable, and compatible with the State's existing development and processing environment. This evaluation will include but is not limited to CPUs and other processors, memory, network connections and bandwidth, communication controllers, telecommunications systems (LAN/WAN), terminals, printers and storage devices.
	DE3	Current and projected vendor support of the hardware will also be evaluated, as well as the State's hardware configuration management plans and procedures.
<b>Development Software</b>	DE4	Evaluate new and existing development software to determine if its capabilities are adequate to meet system development requirements.
	DE5	Determine if the software is maintainable, easily upgradeable, and compatible with the State's existing hardware and software environment.
	DE6	Evaluate the environment as a whole to see if it shows a degree of integration compatible with good development. This evaluation will include, but is not limited to, operating systems, network software, CASE tools, project management software, configuration management software, compilers, cross-compilers, linkers, loaders, debuggers, editors, and reporting software.
	DE7	Language and compiler selection will be evaluated with regard to portability and reusability (ANSI standard language, non-standard extensions, etc.)
	DE8	Current and projected vendor support of the software will also be evaluated, as well as the States software acquisition plans and procedures.
<b>Software Development</b>		
<b>High-Level Design</b>	SD1	Evaluate and make recommendations on existing high level design products to verify the design is workable, efficient, and satisfies all system and system interface requirements.
	SD2	Evaluate the design products for adherence to the project design methodology and standards.
	SD3	Evaluate the design and analysis process used to develop the design and make recommendations for improvements. Evaluate design standards, methodology and CASE tools used and make recommendations.
	SD4	Verify that design requirements can be traced back to system requirements.

	SD5	Verify that all design products are under configuration control and formally approved before detailed design begins.
<b>Detailed Design</b>	SD6	Evaluate and make recommendations on existing detailed design products to verify that the design is workable, efficient, and satisfies all high level design requirements.
	SD7	The design products will also be evaluated for adherence to the project design methodology and standards.
	SD8	The design and analysis process used to develop the design will be evaluated and recommendations for improvements made.
	SD9	Design standards, methodology and CASE tools used will be evaluated and recommendations made.
	SD10	Verify that design requirements can be traced back to system requirements and high level design.
	SD11	Verify that all design products are under configuration control and formally approved before coding begins.
<b>Integration</b>	SD12	Verify that all software components (including those provided by third party vendors) can be effectively integrated.
<b>Job Control</b>	SD13	Perform an evaluation and make recommendations on existing job control and on the process for designing job control.
	SD14	Evaluate the system's division between batch and on-line processing with regard to system performance and data integrity.
	SD15	Evaluate batch jobs for appropriate scheduling, timing and internal and external dependencies.
	SD16	Evaluate the appropriate use of OS scheduling software.
	SD17	Verify that job control language scripts are under an appropriate level of configuration control.
<b>Code</b>	SD18	Evaluate and make recommendations on the standards and process currently in place for code development.
	SD19	Evaluate the existing code base for portability and maintainability, taking software metrics including but not limited to modularity, complexity and source and object size.
	SD20	Code documentation will be evaluated for quality, completeness (including maintenance history) and accessibility.
	SD21	Evaluate the coding standards and guidelines and the project's compliance with these standards and guidelines. This evaluation will include, but is not limited to, structure, documentation, modularity, naming conventions and format.
	SD22	Verify that developed code is kept under appropriate configuration control and is easily accessible by developers.
	SD23	Evaluate the project's use of software metrics in management and quality assurance.
<b>Unit Test</b>	SD24	Evaluate the plans, requirements, environment, tools, and procedures used for unit testing system modules.
	SD25	Evaluate the level of test automation, interactive testing and interactive debugging available in the test environment.
	SD26	Verify that an appropriate level of test coverage is achieved by the test process, that test results are verified, that the correct code configuration has been tested, and that the tests are

		appropriately documented.
<b>System and Acceptance Testing</b>		
<b>System Integration Test</b>	SAT1	Verify that an appropriate level of test coverage is achieved by the test process, that test results are verified, that the correct code configuration has been tested, and that the tests area appropriately documented, including formal logging of errors found in testing.
<b>User Acceptance Testing</b>	SAT2	Evaluate the plans, requirements, environment, tools, and procedures for User Acceptance Testing.
<b>Performance Testing</b>	SAT3	Evaluate outcome of performance tests and measure against performance requirements stipulated in the contract.
	SAT4	Evaluate outcome of load tests to ensure processes are capable of supporting transaction volumes and concurrent user requirements.
<b>Data Management</b>		
<b>Data Conversion</b>	DM1	Evaluate the existing and proposed plans, procedures and software for data conversion.
	DM2	Verify that procedures are in place and are being followed to review the completed data for completeness and accuracy and to perform data clean-up as required.
<b>Database Design</b>	DM3	Evaluate new and existing database designs to determine if they meet existing and proposed system requirements.
	DM4	Recommend improvements to existing designs to improve data integrity and system performance.
	DM5	Evaluate the design for maintainability, scalability, refresh-ability, concurrence, normalization (where appropriate) and any other factors affecting performance and data integrity.
	DM6	Evaluate the project's process for administering the database, including backup, recovery, performance analysis and control of data item creation.
<b>Operations Oversight</b>		
<b>Operational Goals</b>	OO1	Evaluate impact of system on program goals and performance standards.
<b>Operational Documentation</b>	OO2	Evaluate operational plans, processes, and organizational roles and responsibilities.
<b>Operational Processes and Activity</b>	OO3	Verify that processes and equipment are in place to backup system files at appropriate intervals.
	OO4	Evaluate viability of Disaster Recovery and Business Continuity plans.

Attachment: Sample Contract

*(These contract terms contained in the Special Terms and General Terms for Services Contracts are not intended to be a complete listing of all contract terms but are provided only to enable bidders to better evaluate the costs associated with the RFP and the potential resulting contract. Bidders should plan on such terms being included in any contract entered into as a result of this RFP. All costs associated with complying with these requirements should be included in the Cost Proposal or any pricing quoted by the bidder. See Section 3.1 regarding bidder exceptions to contract language.)*

***This is a sample form. DO NOT complete and return this attachment.***

## CONTRACT DECLARATIONS AND EXECUTION

<b>RFP #</b>	<b>Contract #</b>
MED-12-013	
<b>Title of Contract</b>	

This Contract must be signed by all parties before the Contractor provides any Deliverables. The Agency is not obligated to make payment for any Deliverables provided by or on behalf of the Contractor before the Contract is signed by all parties. This Contract is entered into by the following parties:

<b>Agency of the State (hereafter "Agency")</b>	
<b>Contractor: (hereafter "Contractor")</b>	

<b>Contract Information</b>	
<b>Start Date:</b>	<b>End Date of Base Term of Contract:</b> <b>End Date of Contract:</b>
<b>Possible Extension(s):</b>	
<b>Contractor a Business Associate? Yes</b>	<b>Contract Warranty Period (hereafter "Warranty Period"):</b> The term of this Contract, including any extensions.
<b>Contract Include Sharing SSA Data? No</b>	<b>Contract Payments include Federal Funds? Yes</b>
<b>Contractor subject to Iowa Code Chapter 8F? No</b>	<b>Contract Contingent on Approval of Another Agency:</b>
<b>Contractor a Qualified Service Organization? No</b>	Yes <b>Which Agency?</b> Centers for Medicare and Medicaid

This Contract consists of the above information, the attached General Terms for Services Contracts, Special Terms, and all Special Contract Attachments.

## SECTION 1: SPECIAL TERMS

### *1.1 Special Terms Definitions.*

### *1.2 Contract Purpose.*

### *1.3 Scope of Work.*

#### **1.3.1 Deliverables, Performance Measures, and Monitoring Activities.**

The Contractor shall provide the following:

#### **Agency Responsibilities.**

#### **1.3.2 Monitoring, Review, and Problem Reporting.**

**1.3.2.1 Agency Monitoring Clause.** The Contract Manager or designee will:

- Verify Invoices and supporting documentation itemizing work performed prior to payment;
- Determine compliance with general contract terms, conditions, and requirements; and
- Assess compliance with Deliverables, performance measures, or other associated requirements in accordance with the monitoring activities set forth in the Deliverables, Performance Measures, and Monitoring Activities Section.

**1.3.2.2 Agency Review Clause.** The Contract Manager or designee will use the results of monitoring activities and other relevant data to assess the Contractor's overall performance and compliance with the Contract. At minimum, the Agency will conduct an annual review; however, reviews may occur more frequently at the Agency's discretion. As part of the review(s), the Agency may require the Contractor to provide additional data, may perform on-site reviews, and may consider information from other sources.

The Agency may require one or more meetings to discuss the outcome of a review. Meetings may be held in person. During the review meetings, the parties will discuss the Deliverables that have been provided or are in process under this Contract, achievement of the performance measures, and any concerns identified through the Agency's contract monitoring activities.

**1.3.2.3 Problem Reporting.** As stipulated by the Agency, the Contractor and/or Agency shall provide a report listing any problem or concern encountered. Records of such reports and other related communications issued in writing during the course of Contract performance shall be maintained by the parties. At the next scheduled meeting after a problem has been identified in writing, the party responsible for resolving the problem shall provide a report setting forth activities taken or to be taken to resolve the problem together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. The Contract Owner has final authority to approve problem-resolution activities.

The Agency's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy. The Agency's inability to identify the extent of a problem or the extent of damages incurred because of a problem shall not act as a waiver of performance or damages under this Contract.

**1.3.2.4 Addressing Deficiencies.** To the extent that Deficiencies are identified in the Contractor's performance and notwithstanding other remedies available under this Contract, the Agency may require the Contractor to develop and comply with a plan acceptable to the Agency to resolve the Deficiencies.

**1.3.3 Contract Payment Clause.**

**1.3.3.1 Pricing.** In accordance with the payment terms outlined in this section and Contractor’s completion of the Scope of Work as set forth in this Contract, the Contractor will be compensated as follows:  
(To be determined.)

**1.3.3.2 Submission and Payment of Invoices.** The Contractor shall submit an Invoice for services rendered in accordance with this Contract. Invoice(s) shall be submitted monthly. Invoices shall comply with all applicable rules concerning payment of such claims. The Agency shall verify the Contractor’s performance of the Deliverables before making payment. The Agency shall pay all approved Invoices in arrears. 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 law.

**1.3.3.3 Reimbursable Expenses.** Unless otherwise agreed to by the parties in an amendment to the Contract that is executed 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 pursuant to this Contract. The Contractor shall be solely responsible for paying all costs, expenses, and charges it incurs in connection with its performance under this Contract.

**1.4 Insurance Coverage.**

The Contractor and any subcontractor shall obtain the following types of insurance for at least the minimum amounts listed below:

<b>Type of Insurance</b>	<b>Limit</b>	<b>Amount</b>
General Liability (including contractual liability) written on occurrence basis	General Aggregate	\$2 Million
	Product/Completed Operations Aggregate	\$1 Million
	Personal Injury	\$1 Million
	Each Occurrence	\$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers’ Compensation and Employer Liability	As required by Iowa law	As Required by Iowa law
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Professional Liability	Each Occurrence	\$2 Million
	Aggregate	\$2 Million

**1.5 Business Associate Agreement.** The Contractor, acting as the Agency’s Business Associate, 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, as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of

Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) and the federal regulations published at 45 CFR parts 160 and 164. The Business Associate agrees to 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>.

By signing this Contract, the Business Associate consents to receive notice of future amendments to the BAA through electronic mail. The Business Associate 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 Business Associate, Agency Director, and the Agency Security and Privacy Officer.

**1.6 Contract Disputes.**

Except as provided herein, the Contract is not subject to arbitration. The Contract Administrator will decide any dispute concerning performance of this Contract and put that decision in writing and serve a copy on the Contractor. The Contract Administrator's decision will be final unless within ten (10) days of the mailing of the decision the Contractor files with the Director of the Department 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 Administrator'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 Administrator's direction. The Contractor's failure to follow the procedure set out above will be deemed waiver of the Contractor's claim.

**1.7 Letter of Credit or Performance Bond**

The Contractor shall post an irrevocable letter of credit or performance bond acceptable to the Agency. The amount shall be based on a declining graduated formula adjusted and posted with the Agency on an annual basis. At the beginning of the Contract, the amount shall be equal to twenty percent (20%) of the total contract value for the three (3) Base Contract Years, without regard to the Contract Renewal Option Years [e.g. (20%) x (the sum of costs for three (3) years)]. Each year thereafter, the amount of the bond or irrevocable letter of credit shall be calculated by multiplying by the number of years remaining in the base contract times twenty percent (20%) of the total cost of the contract for the remaining years. [E.g. 3 x 20%; 2 x 20% etc.] Should the Agency choose to extend the contract by exercising any or all of its three (3) one (1) year options, the bond or irrevocable letter of credit shall be calculated by multiplying twenty percent (20%) of the cost for that option year. The surety shall be in force from the beginning of the Contract and through termination or expiration of the Contract and shall be delivered to the Agency at the beginning of the Contract.

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, but are not limited to, 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.

The Contractor shall deliver the Letter of Credit or Performance Bond, original in form, to the Agency before performing any services pursuant to the Contract, and in all cases no later than fifteen (15) calendar days

following final execution of the Contract. The Letter of Credit shall be in place for the base term of the Contract and will renew annually to cover the entire Contract period.

The Contractor shall maintain an irrevocable Letter of Credit with payment in favor of the Agency as provided herein. Attachment 1 of the Contract is the form required for this purpose. The Letter of Credit includes any amendments, additions, or replacement letters (collectively referred to as "Letter of Credit") and shall be issued by a financial institution that is well capitalized pursuant to Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA) guidelines, that is FDIC or NCUA insured, that is registered to do business in the State of Iowa, and that has a physical presence in Iowa ("Issuing Bank"). If at any time the Issuing Bank fails to satisfy these requirements for any reason, Contractor shall obtain a substituted Letter of Credit from another institution. Contractor shall pay the cost of maintaining the Letter of Credit.

In the event the Agency receives a Notice of Non-Renewal from the Issuing Bank, the Contractor must provide a substituted Letter of Credit for the next Contract year no later than sixty (60) calendar days prior to the expiration of the Letter of Credit then in effect. Any substituted Letter of Credit shall be submitted on the form provided as Attachment 1 to the Contract and provide for automatic renewal as described herein. A lapse of the Letter of Credit will be a material breach of the Contract.

The Agency shall have the right to draw upon the Letter of Credit in one or more drawings for either a portion or the full amount upon occurrence of any of the following events: (i) the Contract has been terminated by the Agency for cause; (ii) the Contractor is in default under the terms of the Contract and any notice period provided in a notice of default has expired; or (iii) the Contractor is in default under the terms of the Contract and the issuance of a notice of the default is barred or stayed by law. The Agency may draw upon the Letter of Credit as often as any of the foregoing events occur up to the full amount of the Letter of Credit.

Contractor shall promptly cause the Letter of Credit or Performance Bond to be amended if the Agency reasonably requests an amendment, such as to change the address for notices'. If the Letter of Credit is lost, stolen, or damaged, Contractor shall cooperate with Agency to replace such Letter of Credit.

## SECTION 2. GENERAL TERMS FOR SERVICES CONTRACTS

**2.1 Definitions.** Definitions in this section correspond with capitalized terms in the Contract.

**“Acceptance”** means that the Agency has determined that one or more Deliverables satisfy the Agency’s Acceptance Tests. Final Acceptance means that the Agency has determined that all Deliverables satisfy the Agency’s Acceptance Tests. Non-acceptance means that the Agency has determined that one or more Deliverables have not satisfied the Agency’s Acceptance Tests.

**“Acceptance Criteria”** means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Agency and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

**“Acceptance Tests” or “Acceptance Testing”** mean the tests, reviews, and other activities that are performed by or on behalf of the Agency to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.

**“Bid Proposal” or “Proposal”** means the Contractor’s proposal submitted in response to the Solicitation, if this Contract arises out of a competitive process.

**“Business Days”** means any day other than a Saturday, Sunday, or State holiday as specified by Iowa Code §1C.2.

**“Contract”** means the collective documentation memorializing the terms of the agreement between the Agency and the Contractor identified in the Contract Declarations and Execution Section and includes the signed Contract Declarations and Execution Section, the General Terms for Services Contracts, the Special Terms, and any Special Contract Attachments.

**“Declarations and Execution Section”** means the document that contains basic information about the Contract and incorporates by reference the General Terms for Services Contracts, the Special Terms, and any Special Contract Attachments.

**“Deficiency”** means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of

any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

**“Deliverables”** means all of the services, goods, products, work, work product, data, items, materials and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or made available through, the Contractor (or any agent, contractor or subcontractor of Contractor) in connection with this Contract. This includes data that is collected on behalf of the Agency.

**“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

**“Force Majeure”** means 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. 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, strikes, labor unrest, or supply chain disruptions.

**“Invoice”** means a Contractor’s claim for payment. At the Agency’s discretion, claims may be submitted on an original invoice from the Contractor or may be submitted on a claim form accepted by the Agency, such as a General Accounting Expenditure (GAX) form.

**“Solicitation”** means the formal or informal procurement (and any Addenda thereto) identified in

the Contracts Declarations and Execution Section that was issued to solicit the Bid Proposal leading to this Contract.

**“Special Contract Attachments”** means any attachment to this Contract indicated in the Contract Declarations and Execution Section.

**“Special Terms”** means the Section of the Contract entitled “Special Terms” that contains terms specific to this Contract, including but not limited to the Scope of Work and contract payment terms. If there is a conflict between the General Terms for Services Contracts and the Special Terms, the Special Terms shall prevail.

**“Specifications”** means all specifications, requirements, technical standards, performance standards, representations, and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the Solicitation, and the Bid Proposal. Specifications shall include the Acceptance Criteria and any specifications, standards, or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

**“State”** means the State of Iowa, the Agency, and all State of Iowa agencies, boards, and commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

**2.2 Duration of Contract.** The term of the Contract shall begin and end on the dates specified in the Contract Declarations and Execution Section, unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Agency may, in its sole discretion, exercise any applicable extension by giving the Contractor a written extension at least sixty (60) days prior to the expiration of the initial term or renewal term.

**2.3 Scope of Work.** The Contractor shall provide Deliverables that comply with and conform to the Specifications.

#### **2.4 Compensation.**

**2.4.1 Withholding Payments.** In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to the Contractor, in whole or in part, without penalty to the Agency or work stoppage by the Contractor, in

the event the Agency determines that: (1) the 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 the Contractor on any compensation or other amounts withheld or retained by the Agency under this Contract.

**2.4.2 Erroneous Payments and Credits.** The Contractor shall promptly repay or refund the full amount of any overpayment or erroneous payment within thirty (30) Business Days after either discovery by the Contractor or notification by the Agency of the overpayment or erroneous payment.

**2.4.3 Offset Against Sums Owed by the Contractor.** In the event that the Contractor owes the State any sum under the terms of this Contract, any other contract or agreement, pursuant to a judgment, or pursuant to any law, the State may, in its sole discretion, offset any such sum against: (1) any sum Invoiced by, or owed to, the Contractor under this Contract, or (2) any sum or amount owed by the State to the Contractor, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under any applicable laws governing offset.

#### **2.5 Termination.**

**2.5.1 Termination for Cause by the Agency.** The Agency may terminate this Contract upon written notice for the breach by the Contractor or any subcontractor 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 the 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:

**2.5.1.1** The Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the Solicitation or the Bid Proposal that is false, deceptive, or materially incorrect or incomplete;

**2.5.1.2** The Contractor or any of the Contractor’s officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation,

embezzlement, malfeasance, misfeasance, or bad faith;

**2.5.1.3** The Contractor or any parent or affiliate of the Contractor owning a controlling interest in the Contractor dissolves;

**2.5.1.4** The Contractor terminates or suspends its business;

**2.5.1.5** The Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by the Contractor related to the Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;

**2.5.1.6** The Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code Chapter 8F), or local laws, rules, ordinances, regulations, or orders when performing within the scope of this Contract;

**2.5.1.7** The Agency determines or believes the Contractor has engaged in conduct that: (1) has or may expose the Agency or the State to material liability; or (2) has caused or may cause a person's life, health, or safety to be jeopardized;

**2.5.1.8** The Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress, or any other intellectual property right or proprietary right, or the Contractor misappropriates or allegedly misappropriates a trade secret;

**2.5.1.9** The Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or

**2.5.1.10** 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 the 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 the Contractor's performance of its obligations under this Contract; or

- Taking any action to authorize any of the foregoing.

**2.5.2 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 the Contractor. Termination can be for any reason or no reason at all.

**2.5.3 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 without penalty and without any advance notice as a result of any of the following:

**2.5.3.1** 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

**2.5.3.2** 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

**2.5.3.3** 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

**2.5.3.4** If the Agency's duties, programs or responsibilities are modified or materially altered; or

**2.5.3.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely

affects the Agency's ability to fulfill any of its obligations under this Contract.

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

**2.5.4 Other remedies.** 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.

**2.5.5 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 2.5.1, *Termination for Cause by the Agency*) the Agency shall pay only those amounts, if any, due and owing to the 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 2.5.3, *Termination Due to Lack of Funds or Change in Law*, the Agency's obligation to pay the 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 the Contractor's claim. Notwithstanding the foregoing, this section 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 the 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:

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

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

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

**2.5.5.4** 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

**2.5.5.5** Any taxes the 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.

**2.5.6 Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Agency, the Contractor shall:

**2.5.6.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Agency may require.

**2.5.6.2** Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to the Contractor.

**2.5.6.3** 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.

**2.5.6.4** Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by the Contractor.

**2.5.6.5** 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.

**2.5.7 Termination for Cause by the Contractor.**

The Contractor may only terminate this Contract for the breach by the Agency of any material term of this Contract, if such breach is not cured within sixty (60) days of the Agency's receipt of the Contractor's written notice of breach.

**2.6 Confidential Information.**

**2.6.1 Confidential Information and Data.** Any and all of the following information or data is confidential ("Confidential Information"):

**2.6.1.1** Personally identifiable information about recipients or applicants of Agency services and recipients of Contract services;

**2.6.1.2** Agency security protocols or procedures;

**2.6.1.3** Agency system architecture;

**2.6.1.4** Information that could compromise the security of the Agency network or systems;

**2.6.1.5** Information about the Agency's current or future competitive procurements, including the evaluation process, until formal announcement of results; and

**2.6.1.6** Information deemed confidential pursuant to Iowa Code § 22.7.

**2.6.2 Access to Confidential Information.** The Contractor's employees, agents, and subcontractors may have access to Confidential Information to the extent necessary to carry out responsibilities under the Contract. Access shall be in accordance with the Agency's policies and procedures.

**2.6.3 No Dissemination or Disclosure 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 expressly authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. The Contractor shall immediately report to the Agency any unauthorized disclosure of Confidential Information. The Contractor may be held civilly or criminally liable for improper disclosure of Confidential Information.

**2.6.4 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.

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

## **2.7 Indemnification.**

**2.7.1 By the Contractor.** The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers, and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements, and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office,) and the costs, expenses, and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

**2.7.1.1** Any breach of this Contract;

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

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

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

**2.7.1.5** Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates, or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

**2.7.2 Survives Termination.** The Contractor's duties and obligations under this section shall survive the expiration or termination of this Contract and shall apply to all acts or omissions taken or made in connection with the performance of this Contract regardless of the date any potential claim is made or discovered by the Agency or any other Indemnified Party.

## **2.8 Insurance.**

**2.8.1 Insurance Requirements.** The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals thereof. The Contractor's insurance shall, among other things:

**2.8.1.1** 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;

**2.8.1.2.** Name the State of Iowa and the Agency as additional insureds or loss payees on the policies for all coverages required by this Contract, with the exception of Workers' Compensation, or the Contractor shall obtain an endorsement to the same effect; and

**2.8.1.3** Provide a waiver of any subrogation rights that any of its insurance carriers might have against the State on the policies for all coverages required by this Contract, with the exception of Workers' Compensation.

The requirements set forth in this section shall be indicated on the certificates of insurance coverage supplied to the Agency.

**2.8.2 Types and Amounts of Insurance Required.**

Unless otherwise requested by the Agency in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified in the Special Terms for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

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

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

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

**2.9.2 The Contractor's Response.** The Contractor shall submit to the Agency a firm cost proposal for the requested change order within five (5) Business Days of receiving the change order request.

**2.9.3 Acceptance of the Contractor Estimate.** If the Agency accepts the cost proposal presented by the Contractor, the Contractor shall provide the

modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified Deliverables shall be governed by the terms and conditions of this Contract.

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

**2.10 Intellectual Property.**

**2.10.1 Ownership and Assignment of Other Deliverables.** The Contractor agrees that the State and Agency shall become the sole and exclusive owners of all Deliverables. The 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. The 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 the Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary, or affiliate of the 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 the Agency, upon completion or termination of this Contract, the Contractor will immediately turn over to the Agency all Deliverables not previously delivered to the Agency, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors, or affiliates, without the prior written consent of Agency.

**2.10.2 Waiver.** To the extent any of the 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, the 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.

**2.10.3 Further Assurances.** At the Agency's request, the 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 2.10, *Intellectual Property*.

**2.10.4 Publications.** Prior to completion of all services required by this Contract, the 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, the 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.

**2.10.5 Rights in Data.** Any data supplied by the Agency to the Contractor in the course of the performance of this Contract shall be considered the property of the Agency. The Contractor will not use the Agency's data and records for any purpose other than providing services under the Contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise provided to third-parties or commercially exploited by or on behalf of the Contractor. 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.

## **2.11 Warranties.**

**2.11.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law.** Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) 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 the 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. With the exception of Subsection 2.11.3, the provisions of this section apply during the Warranty Period as defined in the Contract Declarations and Execution Section.

### **2.11.2 Contractor represents and warrants that:**

**2.11.2.1** All Deliverables shall be wholly original with and prepared solely by the 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;

**2.11.2.2** The 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

**2.11.2.3** The Agency shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption, or interruption.

### **2.11.3 The Contractor represents and warrants that:**

**2.11.3.1** The Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and

**2.11.3.2** 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. The 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. The 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 or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then the Contractor shall, at the Agency's request and at the Contractor's sole expense:

- Procure for the Agency the right or license to continue to use the Deliverable at issue;
- Replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation, or misappropriation;
- 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
- 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, the 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 the Contractor in this section.

The warranty provided in this subsection shall be perpetual, shall not be subject to the contractual Warranty Period, and shall survive termination of this Contract. The foregoing remedies provided in this subsection shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

**2.11.4 The Contractor represents and warrants that the Deliverables shall:**

- 2.11.4.1** Be free from material Deficiencies; and
- 2.11.4.2** Meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Contract Declarations and Execution Section. During the Warranty Period the 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 the Contractor is unable to repair, correct, or replace such Deliverable

to the Agency's satisfaction, the 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. The 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 Deliverables may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

**2.11.5** The 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 the Contractor of any services performed in violation of this standard, the 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, the Contractor shall reimburse the Agency any fees or compensation paid to the Contractor for the unsatisfactory services.

**2.11.6** The 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.

**2.11.7 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.

### **2.12 Acceptance of Deliverables.**

**2.12.1. Acceptance of Written Deliverables.** For the purposes of this section, written Deliverables means documents including, but not limited to project plans, planning documents, reports, or instructional materials (“Written Deliverables”). Although the Agency determines what Written Deliverables are subject to formal Acceptance, this section generally does not apply to routine progress or financial reports. Absent more specific Acceptance Criteria in the Special Terms, following delivery of any Written Deliverable pursuant to the Contract, the Agency will notify the Contractor whether or not the Deliverable meets contractual specifications and requirements. Written Deliverables shall not be considered accepted by the Agency, nor does the Agency have an obligation to pay for such Deliverables, unless and until the Agency has notified the Contractor of the Agency’s Final Acceptance of the Written Deliverables. In all cases, any statements included in such Written Deliverables that alter or conflict with any contractual requirements shall in no way be considered as changing the contractual requirements unless and until the parties formally amend the Contract.

### **2.12.2. Reserved.**

**2.12.3 Notice of Acceptance and Future Deficiencies.** The Contractor’s receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable shall not be construed as a waiver of any of the Agency’s rights to enforce the terms of this Contract or require performance in the event the Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable.

### **2.13 Contract Administration.**

**2.13.1 Independent Contractor.** The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents, and any subcontractors performing under this Contract are not employees or agents of the State or any agency, division, or department 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).

**2.13.2 Incorporation of Documents.** To the extent this Contract arises out of a Solicitation, the parties acknowledge that the Contract consists of these contract terms and conditions as well as the Solicitation and the Bid Proposal. The Solicitation and the Bid Proposal are incorporated into the Contract by reference. If the Contractor proposed exceptions or modifications to the Sample Contract attached to the Solicitation or to the Solicitation itself, these proposed exceptions or modifications shall not be incorporated into this Contract unless expressly set forth herein. If there is a conflict between the Contract, the Solicitation, and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the Solicitation; (3) the Bid Proposal.

**2.13.3 Intent of References to Bid Documents.** To the extent this Contract arises out of a Solicitation, the references to the parties’ obligations, which are contained in this Contract, are intended to supplement or clarify the obligations as stated in the Solicitation and the Bid Proposal. The failure of the parties to make reference to the terms of the Solicitation or the Bid Proposal in this Contract shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the Solicitation and the Contractor’s Bid Proposal. Terms offered in the Bid Proposal, which exceed the requirements of the Solicitation, shall not be construed as creating an inconsistency or conflict with the Solicitation or the Contract. The contractual obligations of the Agency are expressly stated in this document. The Bid Proposal does not create any express or implied obligations of the Agency.

**2.13.4 Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders when providing Deliverables pursuant to 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 Iowa Department of Management to comply with the requirements of 541 Iowa Administrative Code chapter 4. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, the Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation, a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

**2.13.5 Procurement.** The Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

**2.13.6 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.

**2.13.7 Amendments.** With the exception of the Business Associate Agreement, which may be modified or replaced on notice pursuant to Section 1.5, *Business Associate Agreement*, this Contract may only be amended by mutual written consent of the parties. Amendments shall be executed on a form approved by the Agency that expressly states the intent of the parties to amend this Contract.

**2.13.8 No Third Party Beneficiaries.** There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.

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

**2.13.10 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.

**2.13.11 Assignment and Delegation.** The 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.

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

**2.13.13 No Drafter.** No party to this Contract shall be considered the drafter of this Contract for the purpose of any statute, case law, or rule of construction that would or might cause any provision to be construed against the drafter.

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

**2.13.15 Not a Joint Venture.** Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

**2.13.16 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, for any default of activities and obligations, and for any fiscal liabilities.

**2.13.17 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.

**2.13.18 Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of 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 to require performance or to claim a breach.

**2.13.19 Notice.** With the exception of the Business Associate Agreement, as set forth in Section 1.5, *Business Associate Agreement*, any notices required by the Contract shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party's Contract Manager as set forth in the Contract Declarations and Execution Section. From time to time, the parties may change the name and address of a party designated to receive

notice. Such change of the designated person shall be in writing to the other party.

Each such notice shall be deemed to have been provided:

- At the time it is actually received in the case of hand delivery;
- Within one (1) day in the case of overnight delivery, courier 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.

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

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

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

**2.13.23 Authorization.** The Contractor represents and warrants that:

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

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

**2.13.24 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.

**2.13.25 Records Retention and Access.**

**2.13.25.1 Financial Records.** 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 seven (7) 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 seven (7) 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 seven (7) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State of Iowa or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the Contractor relating to orders, Invoices or payments, or any other Documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the 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:

**2.13.25.1.1** 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, these funds 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.

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

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

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

**2.13.25.2** The Contractor shall retain all non-medical and medical client records for a period of seven(7) 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).

**2.13.25.3 Destruction of Confidential Information.**

At the conclusion of this Contract, the Agency may require the Contractor to return Confidential Information. If not required to return such information, and in accordance with any retention requirements in this Records Retention and Access Section or any applicable provision of law or regulation, the Contractor will destroy all Confidential Information in such a manner as to render the information incapable of being reconstructed or recovered. If return or destruction is not feasible, the Contractor will provide the Agency with the reason(s) in writing that make the return or destruction of such Confidential Information infeasible.

If the Agency provides written permission for the Contractor to retain the Confidential Information, the Contractor will extend the protections of this Contract to the Confidential Information and limit any further uses or disclosures.

**2.13.26 Audits.** Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the 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 subrecipient

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 subrecipient versus vendor relationships. The Contractor shall provide the Agency with a copy of any written audit findings or reports, whether in draft or final form, within two (2) Business Days following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

**2.13.27 Reimbursement of Audit Costs.** If the Auditor of the State of Iowa notifies the Agency of an issue or finding involving the Contractor's noncompliance with laws, rules, regulations, and/or contractual agreements governing the funds distributed under this Contract, the Contractor shall bear the cost of the Auditor's review and any subsequent assistance provided by the Auditor to determine compliance. The Contractor shall reimburse the Agency for any costs the Agency pays to the Auditor for such review or audit.

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

The Agency reserves the right to conduct and/or request the disclosure of criminal history and other background investigation of the Contractor, its officers, directors, shareholders, and the Contractor's staff, agents, or subcontractors retained by the Contractor for the performance of Contract services.

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

**2.13.30 Obligations Beyond Contract Term.** This Contract shall remain in full force and effect to the

end of the specified term or until terminated pursuant to this Contract. All obligations of the Agency and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the termination or expiration of this Contract.

**2.13.31 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.

**2.13.32 Delays or Potential Delays of Performance.** Whenever the Contractor encounters any difficulty which is delaying or threatens to delay the timely performance of this Contract, including but not limited to potential labor disputes, the Contractor shall immediately give notice thereof in writing to the Agency with all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Agency or the State of any rights or remedies to which either is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Furthermore, the Contractor will not be excused from failure to perform that is due to a Force Majeure unless and until the Contractor provides notice pursuant to this provision.

**2.13.33 Delays or Impossibility of Performance Based on a 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. 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. The party seeking to exercise this provision 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.

**2.13.34 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 the Agency deems appropriate.

**2.13.35 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.

**2.13.36 Reporting Requirements.** If this Contract permits other State agencies and political subdivisions to make purchases off of the Contract, the Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a report to the Agency on a quarterly basis. The report shall identify all of the State agencies and political subdivisions making purchases off of this Contract and the quantities purchased pursuant to the Contract during the reporting period.

**2.13.37 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 the Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

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

**2.13.39 Use of Name or Intellectual Property.** The 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.

**2.13.40 Taxes.** The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on the Contractor's employees' wages. The State is exempt from State and local sales and use taxes on the Deliverables.

**2.13.41 No Minimums Guaranteed.** The Contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

**2.14 Contract Certifications.** The Contractor will fully comply with obligations herein. If any conditions within these certifications change, the Contractor will provide written notice to the Agency within twenty-four (24) hours from the date of discovery.

**2.14.1 Certification of Compliance with Pro-Children Act of 1994.** The 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 Women, Infants, and Children (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.

**2.14.2 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:

**2.14.2.1** 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 Agency or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**2.14.2.2** The Contractor shall provide immediate written notice to the Agency if at any time the Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

**2.14.2.3** 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. Contact the Agency for assistance in obtaining a copy of those regulations.

**2.14.2.4** The Contractor agrees by signing this Contract 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.

**2.14.2.5** The Contractor further agrees by signing this Contract 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.

**2.14.2.6** 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.

**2.14.2.7** 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.

**2.14.2.8** Except for transactions authorized under Section 2.14.2.4 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.

**2.14.2.9** The Contractor certifies, by signing this Contract, 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.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this Contract.

**2.14.3 Certification Regarding Lobbying.** The Contractor certifies, to the best of his or her knowledge and belief, that:

**2.14.3.1** 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.

**2.14.3.2** 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.

**2.14.3.3** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants,

loans and cooperative agreements) and that all subrecipients 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.

#### **2.14.4 Certification Regarding Drug Free Workplace**

**2.14.4.1 Requirements for Contractors.** Who are Not Individuals. If the Contractor is not an individual, the Contractor agrees to provide a drug-free workplace by:

**2.14.4.1.1** Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

**2.14.4.1.2** Establishing a drug-free awareness program to inform employees about:

- The dangers of drug abuse in the workplace;
- The Contractor's policy of maintaining a drug-free workplace;
- Any available drug counseling, rehabilitation, and employee assistance programs; and
- The penalties that may be imposed upon employees for drug abuse violations;

**2.14.4.1.3** 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 Subsection 2.14.4.1.1;

**2.14.4.1.4** Notifying the employee in the statement required by Subsection 2.14.4.1.1 that as a condition of employment on such contract, the employee will:

- Abide by the terms of the statement; and
- Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

**2.14.4.1.5** Notifying the contracting agency within ten (10) days after receiving notice under the second unnumbered bullet of Subsection 2.14.4.1.4 from an employee or otherwise receiving actual notice of such conviction;

**2.14.4.1.6** 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

**2.14.4.1.7** Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

**2.14.4.2 Requirement for Individuals.** If the Contractor is an individual, by signing the Contract, the Contractor agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the Contract.

**2.14.4.3 Notification Requirement.** The Contractor shall, within thirty (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):

**2.14.4.3.1** Take appropriate personnel action against such employee up to and including termination; or

**2.14.4.3.2** 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.

**2.14.5 Conflict of Interest.** The 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.

**2.14.6 Certification Regarding Sales and Use Tax.** By executing this Contract, the Contractor certifies it is either (1) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use

taxes as required by Iowa Code chapter 423; or (2) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code § 423.1(42) and (43). The Contractor also acknowledges that the Agency may declare the Contract void if the above 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.

**2.14.7 Reserved.**

ATTACHMENT 1

(BANK LETTERHEAD)

**STANDBY LETTER OF CREDIT**

Letter of Credit No.: \_\_\_\_\_ Issue Date \_\_\_\_\_

Iowa Department of Human Services  
Iowa Medicaid Enterprise  
Attention: Contract Administration Office  
100 Army Post Road  
Des Moines, Iowa 50315

To Whom It May Concern:

At the request of \_\_\_\_\_ (the "Applicant"), we hereby establish this irrevocable Letter of Credit in favor of the Iowa Department of Human Services.

**1. Credit Amount.** The maximum credit available under this letter of credit is USD \$\_\_\_\_\_. Partial and multiple drawings may be made under this Letter of Credit. Each drawing honored shall reduce the amount available to be drawn under this Letter of Credit dollar for dollar.

**2. Expiration and Automatic Renewal.** This Letter of Credit shall be effective immediately on the issue date and shall expire at the close of business on the first Business Day on or after N/A (the "Expiration Date"). However, this Letter of Credit shall automatically and annually renew on the Expiration Date (the "Annual Renewal Date"). Under no circumstances shall we be required to honor this Letter of Credit after N/A (the "Final Expiration Date"). In addition, the Letter of Credit may be terminated by us before the Final Expiration Date as follows:

**a)** At least ninety (90) calendar days prior to the Expiration Date or any Annual Renewal Date we provide written notice not to renew this Letter of Credit. Any such notice or any other communication shall be sent by certified mail, to:

Iowa Department of Human Services  
Iowa Medicaid Enterprise  
Attention: Contract Administration Office  
(515) 256-4646  
100 Army Post Road  
Des Moines, Iowa 50315

If we elect not to renew this Letter of Credit, we will also provide notice to Applicant simultaneously by certified mail; or,

**b)** You provide a signed statement on Agency letterhead waiving the right to payment under this Letter of Credit prior to the next automatic renewal.

Irrespective of any other provision of this paragraph, if we receive a Drawing Certificate from you within the last 30 calendar days of any current term, the current term shall be extended automatically for a period of thirty (30) calendar days.

**3. Document to Be Presented.** Funds under this Letter of Credit are available to you upon presentation of a Drawing Certificate substantially in the form attached to this letter as Attachment A. The Drawing Certificate need not be identical to the attachment but must be signed by the Director of the Iowa Department of Human Services or his representative.

**4. Method and Notice of Presentment.** A Drawing Certificate shall be presented during our business hours on any Business Day prior to the expiration of this Letter of Credit. A Drawing Certificate may be delivered to us in the manner of your choice from the following methods:

At the following physical Iowa address:

Iowa Department of Human Services  
Iowa Medicaid Enterprise  
Attention: Contract Administration Office  
100 Army Post Road  
Des Moines, Iowa 50315

By certified or express mail to the following physical Iowa address:

Iowa Department of Human Services  
Iowa Medicaid Enterprise  
Attention: Contract Administration Office  
(515) 256-4646  
100 Army Post Road  
Des Moines, Iowa 50315

A Drawing Certificate may be delivered to another physical Iowa address or fax number designated by us after providing at least ten (10) Business Days' prior written notice, delivered to you by certified mail. It is understood that drawings made by electronic presentation shall be deemed the operative instrument without the need of originally signed documents.

**5. Time and Method for Payment.** Payment shall be made to you in the amount demanded in the Drawing Certificate by the end of the third Business Day following the date the Drawing Certificate was presented to us. Payments shall be made by cashier's check sent by certified mail, postage pre-paid, return receipt requested, or by express delivery to the following address:

Department of Human Services  
Cashier's Office  
Room 14 - First Floor Hoover Building  
1305 E. Walnut Street  
Des Moines, IA 50319

If we do not honor the Drawing Certificate for any reason, we will contact you by telephone prior to the end of the third Business Day. This contact will be followed by a written notice sent by certified mail to the address provided in paragraph 2.

**Letter of Credit Attachment A: Drawing Certificate**

Letter of Credit No. \_\_\_\_\_

Date \_\_\_\_\_

*[Name and address of Issuing Bank]*

At sight, pay to the order of the State of Iowa, Department of Human Services, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Payment by the Issuing Bank pursuant to this drawing shall be made by cashier's check delivered to the State of Iowa, Department of Human Services, at the address provided in the Letter of Credit.

\_\_\_\_\_  
Signature for the Department of Human Services

\_\_\_\_\_  
Printed Name:

Title: Director, Iowa Department of Human Services

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, year \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Iowa